

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States 406
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

May 22, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

As Members of the House Subcommittee on Communications and Technology, we are concerned about your repeated evasive responses to our inquiries and your outright refusal to respond to some members of this Committee. Oversight of the agencies within our jurisdiction is one of the most important responsibilities of the Committee. Oversight hearings and letters ensure agencies within our jurisdiction are accountable to the American people and provide answers on some of the most critical issues affecting our constituents.

While we appreciate your continued willingness to testify before our Committee, we are concerned that you have been unable to give complete responses to verbal questions, questions for the record, or oversight letters from our members. We take our oversight responsibilities very seriously, and we expect witnesses before the Committee and recipients of our letters to treat their responses the same way.

As you noted earlier this Congress, “the Commission is a creature of Congress, and it is therefore important that we keep Congress informed about what the FCC is doing.” You also committed to “strive to be responsive to all Congressional inquiries to the extent that I can within the law and Commission rules.” To date, your responses to our requests, in the instances when we receive them, do not meet the very commitment you made to us, and we hope that will change.

Accordingly, we have attached a collection of letters that you have yet to answer completely, or at all. Please provide complete written responses by June 4, 2018. We appreciate your attention to this important matter. Should you have any questions, please contact Gerald Leverich of the Democratic Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Ranking Member




Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology



Peter Welch
Member of Congress



Yvette D. Clarke
Member of Congress



Dave Loebsack
Member of Congress



Raul Ruiz, M.D.
Member of Congress



Debbie Dingell
Member of Congress



Bobby Rush
Member of Congress



Anna Eshoo
Member of Congress



Eliot L. Engel
Member of Congress



G. K. Butterfield
Member of Congress



Doris Matsui
Member of Congress



Jerry McNerney
Member of Congress

Congress of the United States
Washington, DC 20510

237

March 22, 2017

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Dear Chairman Pai,

As Members who are actively engaged on 911 issues, we write to share our serious concerns regarding the recent outage of 911 emergency services for AT&T wireless customers on March 8.

We commend the Federal Communications Commission (FCC) for taking swift action to launch an investigation on March 9 and we look forward to the discussion of the outage at your upcoming Open Meeting. To the greatest extent possible, the results of the investigation should be made publically available so consumers are aware of the cause and impact of the outage. In addition, we request you provide us with a formal briefing on the FCC's findings, including the cause of the outage; how many customers were affected nationwide; how many 911 calls were disrupted; and how affected customers were notified of the outage.

We also seek your recommendations on how future 911 wireless outages can be avoided. With an estimated 70 percent of the 240 million emergency 911 calls each year placed from wireless phones, and nearly 50 percent of Americans living in cell-phone-only households, it is critical that wireless 911 services are a reliable lifeline for consumers.

We thank you for your attention to this matter and we look forward to your prompt response.

Sincerely,


Amy Klobuchar
United States Senator


Anna G. Eshoo
Member of Congress

COMMITTEE ON
ENERGY AND COMMERCE

SUBCOMMITTEES:
ENERGY AND POWER
COMMUNICATIONS AND TECHNOLOGY

CO-CHAIR:
COALITION FOR AUTISM
RESEARCH AND EDUCATION
CONGRESSIONAL CAUCUS ON ROBOTICS



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Congress of the United States
House of Representatives

MIKE DOYLE
14TH DISTRICT, PENNSYLVANIA

April 24, 2017

WASHINGTON OFFICE:
239 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2135

DISTRICT OFFICES:
2637 EAST CARSON STREET
PITTSBURGH, PA 15203
(412) 390-1499

11 DUFF ROAD
PENN HILLS, PA 15235
(412) 241-6055

627 LYSLE BOULEVARD
MCKEESPORT, PA 15132
(412) 664-4049

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I write to express my concern regarding media reports indicating that you recently shared your proposed plans to undermine the FCC's 2015 Open Internet order. These reports specifically indicate that you met with both telecom trade associations¹ and several large internet companies² to brief them on your plans to scale back net neutrality protections.

When specifically asked about those meetings, and why there was no record of those meetings filed with the Commission, you responded that you "didn't discuss the merits of any pending proceeding." You, however, went on to say that you were "not going to comment on the specific nature of the conversation."

Regardless of what was or was not discussed in your meetings, the Commission has a greater duty to brief Congress. In response to a letter from my office earlier this year, you noted that "the Commission is a creature of Congress, and it is therefore important that we keep Congress informed about what the FCC is doing."

I request that your office fully brief Congress about these discussions and document any conversations that you have had with outside groups on the issue of rolling back, or in any way modifying, the FCC's current net neutrality protections. I further request those documents be made publicly available on the Commission's website.

Sincerely,

Mike Doyle

¹ *FCC Head Ajit Pai Reportedly Outlines Plans to Roll Back Net Neutrality Rules*, The Verge (Apr. 7, 2017) (www.theverge.com/2017/4/7/15215316/fcc-ajit-pai-net-neutrality-title-ii-plans-roll-back).

² *FCC Chairman Pai Met with Facebook and Others to Discuss Net Neutrality Changes to Come*, Recode (Apr. 20, 2017) (www.recode.net/2017/4/20/15373502/fcc-chairman-ajit-pai-met-facebook-google-net-neutrality-open-internet).

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Congress of the United States
Washington, DC 20515

May 3, 2017

Received & Inspected

MAY 08 2017

FCC Mail Room

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Dear Chairman Pai,

It is a fundamental principle in the American broadcast system that the public has a right to know who is behind programming on our public airwaves that is designed to persuade them. This principle is embodied in the sponsorship identification requirements of the Communications Act of 1934 and the associated regulations of the Federal Communications Commission (FCC).¹ We write today to inquire whether the FCC's sponsorship identification and public file ownership disclosure requirements should be applied to foreign state-sponsored broadcast content, such as RT (formerly Russia Today), which U.S. intelligence agencies have determined was used in an effort to influence the American public in our national elections.

Intelligence agencies have been clear about the role RT played in the U.S election. In a declassified report from January, 2017, the Director of National Intelligence referred to RT as "[t]he Kremlin's principal international propaganda outlet."² The report also notes the lengths to which RT has worked to obscure its ties to the Russian government, including changing its name from "Russia Today" to "RT" in 2008 in an effort to "stop scaring away the audience."³ Given RT's efforts to hide its true intentions, we believe it is critical for the American people to have a clearer picture of the true source of this channel's programming.

As staunch defenders of the First Amendment, we are not suggesting that any broadcast speech should be suppressed, but the airwaves are a public trust that have always carried with them special obligations to the public with respect to content broadcast over them. Sponsorship identification is one of those special obligations which extends back to the earliest days of broadcast regulation in the United States.⁴ Requiring broadcasters to maintain a public inspection file with information like ownership data goes back more than forty years.⁵ With RT broadcasting over-the-air in certain markets, we ask whether you believe the FCC's rules should be applied to foreign state-sponsored channels. The American people deserve to know who is attempting to influence them.

¹ 47 U.S.C. § 317 and 47 C.F.R. § 73.1212.

² Office of the Director of National Intelligence, *"Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution*, at 4, January 6, 2017. Hereinafter the ODNI Report.

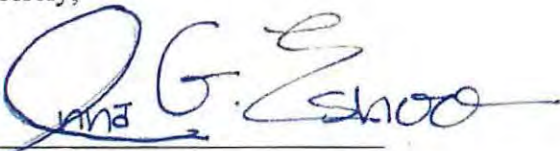
³ ODNI Report at 12.


⁴ See § 19 of the Radio Act of 1927.

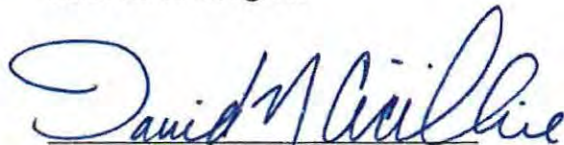
⁵ See 47 C.F.R. § 73.3526; <https://publicfiles.fcc.gov/>

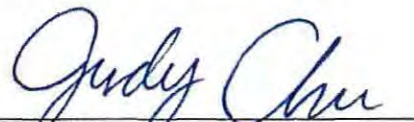
Thank you for your attention to this important inquiry and we look forward to your timely response.

Sincerely,

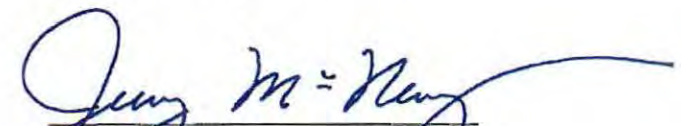

Anna G. Eshoo
Member of Congress


Michael F. Doyle
Member of Congress



David N. Cicilline
Member of Congress

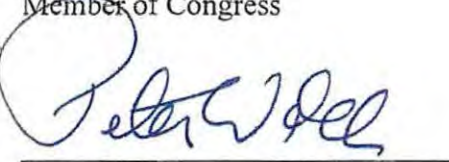

Judy Chu
Member of Congress



Jimmy Panetta
Member of Congress



Terry McInerney
Member of Congress


Mark Takano
Member of Congress


Doris Matsui
Member of Congress


Peter Welch
Member of Congress


Eric Swalwell
Member of Congress


David Loebsack
Member of Congress



*Congress of the United States
House of Representatives
Washington, D.C. 20515*

*Anna G. Eshoo
Eighteenth District
California*

May 25, 2017

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Pai,

I'm writing to follow-up on the letter I sent to you on May 3rd along with ten other Members of Congress relative to RT, the Russian State-sponsored news agency.

As I stated in my original letter, our intelligence agencies have described RT as a propaganda outlet for the Russian government and found that it played a prominent role in the effort to influence the outcome of the 2016 election. Just as disturbingly, RT has taken steps to obscure its ties to the Russian government in an effort to confuse viewers in the United States about its true intentions.

The American people deserve to know the truth about who is behind RT's programming. I believe the FCC has tools at its disposal that can help do exactly that. Please respond to my original letter as soon as possible to this critical issue.

Sincerely,

Anna G. Eshoo
Member of Congress

Enclosure

Congress of the United States
Washington, DC 20515

July 17, 2017

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Dear Chairman Pai,

On May 3, 2017, we wrote to you regarding RT, the Russian State-sponsored news agency, asking whether the FCC's Sponsorship Identification rules and broadcast public file ownership requirements should be applied to this station. This also follows Congresswoman Eshoo's letter of May 25th asking for a response to our original letter. To date, we have not received a response from you.

It is an established fact that the Russian government interfered in the 2016 election, with RT playing an important role in that effort. The Office of the Director of National Intelligence issued a declassified report in January, 2017 entitled *Assessing Russian Activities and Intentions in Recent U.S. Elections*. This report is replete with references to RT, including the fact that it is the principle international propaganda outlet for the Russian government. In this capacity the channel consistently used its platform on behalf of the Trump candidacy and lauded his win in the election as "...a vindication of Putin's advocacy of global populist movements."¹ Stunningly, RT and the Russian government were able to use the airwaves owned by the American people as part of their attempts to influence our citizens. In light of these actions, it is disturbing that RT has taken steps to obscure its ties to the Russian government, including changing its name so that it no longer includes an explicit reference to Russia. This is a very serious issue and it's why we wrote to you earlier this year.

It is essential for the American people to know the truth about who is behind RT's programming. We consider this to be a matter of national importance that deserves your attention and we once again ask you to provide us with a response to our original letter.

Sincerely,



Anna G. Eshoo
Member of Congress



Michael F. Doyle
Member of Congress

¹ Office of the Director of National Intelligence, *Assessing Russian Activities and Intentions in Recent U.S. Elections*, at 4, January 6, 2017.



David N. Cicilline
Member of Congress



Jimmy Panetta
Member of Congress



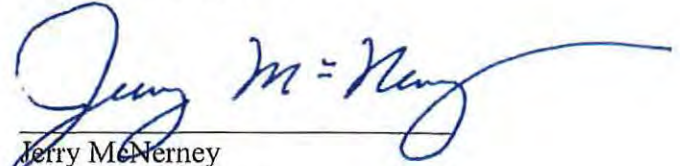
Doris Matsui
Member of Congress



David Loebsack
Member of Congress



Judy Chu
Member of Congress



Jerry McNerney
Member of Congress



Peter Welch
Member of Congress

cc: The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission
The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

May 11, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

The Honorable Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai, Commissioner Clyburn, and Commissioner O'Rielly:

We write to urge the Federal Communications Commission (FCC) to provide sufficient time for Americans to respond to the latest proposal in the Open Internet proceeding. The draft proposal circulated by Chairman Pai on April 17, 2017, gives only 30 days to reply to initial comments. Under this deadline, these replies would come due in the middle of August, when many small business owners, students, internet users, and workers are away. We therefore request that you extend this comment period by at least one month, as consistent with applicable law.

Chairman Pai has recognized that net neutrality has been the "subject of a fierce public debate."¹ But more than that, the issue is critically important for the millions of Americans who do not normally participate in FCC proceedings and who cannot afford Washington lawyers to file comments on their behalf. We should all agree that their opinions should count nonetheless. The Commission's website also recently crashed, making it impossible for the public to submit

¹ Federal Communications Commission, *Remarks as Prepared for Delivery by Chairman Ajit Pai on the Future of Internet Freedom* (Apr. 26, 2017) (transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0426/DOC-344590A1.pdf).

The Honorable Ajit V. Pai
The Honorable Mignon Clyburn
The Honorable Michael O'Rielly
May 11, 2017
Page 2

comments for some time.² Understanding these facts, during its Open Internet proceeding in 2014, the FCC gave the public from May to July for initial comments and then from July to September to reply to those comments. This comment cycle not only gave Americans time to more fully consider their responses, it allowed the public to return to school, to home, and to work from their August travel. We believe the Commission should provide the public the same courtesy when reconsidering the existing protections.

As Chairman Pai has said, the question the "FCC must answer is what policies will give the American people what they want."³ We urge you to extend the FCC's current comment period by at least one month so that the American people can adequately inform the Commission how to answer this question. Developing a fulsome record that gives everyone a fair chance to weigh in should be in everyone's interest—no matter where they ultimately fall in the net neutrality debate.

Sincerely,



Frank Pallone, Jr.
Ranking Member



Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology

² *John Oliver Just Crashed the FCC's Website Over Net Neutrality—Again*, Motherboard (May 8, 2017) (motherboard.vice.com/en_us/article/john-oliver-just-crashed-the-fccs-website-over-net-neutralityagain).

³ Federal Communications Commission, *Remarks as Prepared for Delivery by Chairman Ajit Pai on the Future of Internet Freedom* (Apr. 26, 2017) (transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0426/DOC-344590A1.pdf).

Congress of the United States
House of Representatives
Washington, D.C. 20515

528

June 26, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

The Honorable Mignon L. Clyburn
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

The Honorable Michael O’Rielly
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Dear Chairman Pai, Commissioner Clyburn, and Commissioner O’Rielly:

We write to express concerns about the Federal Communications Commission’s (FCC) cybersecurity preparedness, and the multiple reported problems with the FCC’s website in taking public comments in the net neutrality proceeding. Recent events have raised questions about the security of the FCC’s network, and we have serious concerns that the FCC’s website failures deprive the public of opportunities to comment on net neutrality – an issue that affects everyone who uses the internet.

Problems with the FCC’s net neutrality docket made headlines last month after comedian John Oliver implored his viewers to file comments about net neutrality with the FCC. Multiple media outlets reported that the FCC’s Electronic Comment Filing System “went down”¹ after the segment, noting that “the FCC’s servers appeared to be overwhelmed by the flood of traffic.”²

The following day, on May 8, 2017, the FCC’s Chief Information Officer announced that the FCC “was subject to multiple distributed denial-of-service attacks,” a situation that made it

¹ Ali Breland, *FCC site crashes after John Oliver segment*, The Hill (May 8, 2017). See also, Sam Gustin, *John Oliver Just Crashed the FCC’s Website Over Net Neutrality—Again*, Motherboard (May 8, 2017).

² Jeff John Roberts, *John Oliver Gets Fired Up Over Net Neutrality—and FCC’s Site Goes Down*, Fortune (May 8, 2017).

"difficult for legitimate commenters to access and file with the FCC."³ In response to an inquiry from Senators Wyden and Schatz, the FCC recently released more information about the alleged cyberattacks.⁴ Yet the FCC's response raises additional questions, and there are other areas of concern about the net neutrality docket for which we seek answers.

For example, recent reports have also indicated that as many as 150,000 comments had disappeared from the FCC's net neutrality docket,⁵ and that automated comments were submitted to the FCC using names and addresses of real people without their knowledge or consent.⁶ Even with all of these problems and irregularities, the FCC has given only until the middle of August for the public to provide initial comments on the FCC's net neutrality proposal, despite receiving calls to extend the deadline.⁷ Further, Republican Congressional leaders have not held hearings to examine these issues, despite receiving calls to do so.⁸

We ask you to examine these serious problems and irregularities that raise doubts about the fairness, and perhaps even the legitimacy, of the FCC's process in its net neutrality proceeding. Giving the public an opportunity to comment in an open proceeding such as this one is crucial – so that the FCC can consider the full impact of its proposals, and treat everyone who would be affected fairly. It is also required by law. The FCC must comply with Administrative

³ Federal Communications Commission, *FCC CIO Statement on Distributed Denial-of-Service Attacks on FCC Electronic Comment Filing System* (May 8, 2017) (press release).

⁴ Letter from Ajit V. Pai, Chairman, Federal Communications Commission, to Senators Wyden and Schatz (June 15, 2017) (<https://www.politicopro.com/f/?id=0000015c-d59b-de74-a17f-ddbba4380001>) (FCC Response).

⁵ John Eggerton, *FCC's Network Neutrality Docket Appears to Shrink*, Broadcasting & Cable (June 8, 2017).

⁶ Dominic Rushe, *'Pretty ridiculous': thousands of names stolen to attack net neutrality rules*, The Guardian (May 26, 2017).

⁷ Letter from Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, and Rep. Mike Doyle, Ranking Member, Subcommittee on Communications and Technology, House Committee on Energy and Commerce, to Ajit V. Pai, Chairman, Federal Communications Commission (May 11, 2017).

⁸ Letter from Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, Rep. Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, Rep. Mike Doyle, Ranking Member, Subcommittee on Communications and Technology, House Committee on Energy and Commerce, and Yvette Clarke, Member of Congress, to Rep. Greg Walden, Chairman, House Committee on Energy and Commerce, Rep. Tim Murphy, Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, and Rep. Marsha Blackburn, Chairman, Subcommittee on Communications and Technology, House Committee on Energy and Commerce (May 17, 2017).

Procedure Act requirements to give the public notice and an opportunity to comment, as well as to respond to those comments.⁹ This is important, especially where the FCC is considering changing rules that affect everyone who uses the internet.

It is also critical that the FCC take all appropriate measures to secure its networks from cyberattacks. At a minimum, the FCC must meet cybersecurity requirements under the Federal Information Security Modernization Act (FISMA). The Chairman of the FCC is ultimately responsible under FISMA to provide information security protections for the agency.¹⁰ This is especially important given that the FCC's Chief Information Officer stated that the FCC experienced a cyberattack that made it difficult for members of the public to file comments with the agency in an open proceeding.¹¹ We therefore request responses to the following questions by July 17, 2017:

1. According to the FCC's response to Senators Wyden and Schatz, the May 2017 incident was a "non-traditional DDoS attack" where bot traffic "increased exponentially" between 11pm EST on May 7, 2017 until 1pm EST on May 8, 2017, representing a "3,000% increase in normal volume."¹² What "additional solutions" is the FCC pursuing to "further protect the system," as was mentioned in the FCC's response?¹³
2. According to the FCC, the alleged cyberattacks blocked "new human visitors.... from visiting the comment filing system."¹⁴ Yet, the FCC, consulting with the FBI, determined that "the attack did not rise to the level of a major incident that would trigger further FBI involvement."¹⁵ What analysis did the FCC and the FBI conduct to determine that this was not a "major incident?"

⁹ 5 U.S.C. § 553. See, e.g., *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227 (D.C. Cir.) (2007) (remanding final rule to the FCC after finding the FCC had failed to comply with obligation under the Administrative Procedure Act to give interested parties notice and a reasonable opportunity to comment in the rulemaking process); *Home Box Office, Inc. v. FCC*, 567 F.2d 9 (D.C. Cir.) (1977) (vacating rule for failure of the FCC to comply with the Administrative Procedure Act's notice and comment requirements that are intended to "provide fair treatment for persons affected by a rule.").

¹⁰ 44 U.S.C. § 3554(a).

¹¹ FCC Press Release, *supra* n. 3.

¹² FCC Response, *supra* n. 4.

¹³ *Id.*

¹⁴ *Id.*

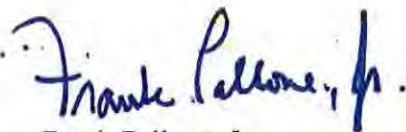
¹⁵ *Id.*

The Honorable Ajit V. Pai
The Honorable Mignon L. Clyburn
The Honorable Michael O'Rielly
June 26, 2017
Page 4

3. What specific "hardware resources" will the FCC commit to accommodate people attempting to file comments during high-profile proceedings? Does the FCC have sufficient resources for that purpose?
4. Is the FCC making alternative ways available for members of the public to file comments in the net neutrality proceeding?
5. Did the FCC contact the National Cybersecurity and Communications Integration Center's Hunt and Incident Response Team (HIRT) at the U.S. Department of Homeland Security to investigate the May 8, 2017 incident, and if so, on which date(s) was such contact made? If the FCC did not contact HIRT to investigate the May 8, 2017 incident, please explain why it did not do so.
6. What were the findings from any forensic investigative analyses or reports concerning the May 8, 2017 incident, including how and why a denial-of-service attacks were declared, and from what attack vectors they came?
7. Did the FCC notify Congress of the May 8, 2017 incidents as provided by FISMA?¹⁶ If so, how did the FCC notify Congress? If not, why not?
8. Did the FCC notify its Office of Inspector General (OIG) of the May 8, 2017 incidents, and if so, when did it notify the OIG?

Your assistance in this matter is greatly appreciated, and we look forward to receiving a response. If you have any questions, please contact the minority committee staff of the House Energy and Commerce Committee at (202) 225-3641 and the minority committee staff of the House Oversight and Government Reform Committee at (202) 225-5051.

Sincerely,



Frank Pallone, Jr.
Ranking Member
Committee on Energy
and Commerce



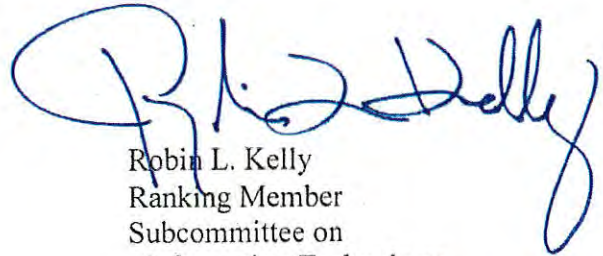
Elijah E. Cummings
Ranking Member
Committee on Oversight
and Government Reform

¹⁶ 44 U.S.C. § 3554(b)(7)(C)(iii)(III).

The Honorable Ajit V. Pai
The Honorable Mignon L. Clyburn
The Honorable Michael O'Rielly
June 26, 2017
Page 5



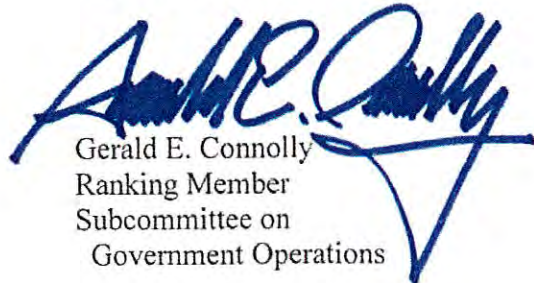
Diana DeGette
Ranking Member
Subcommittee on Oversight and
Investigations



Robin L. Kelly
Ranking Member
Subcommittee on
Information Technology



Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology



Gerald E. Connolly
Ranking Member
Subcommittee on
Government Operations

Cc: The Honorable Trey Gowdy, Chairman
House Committee on Oversight and Government Reform

The Honorable Greg Walden, Chairman
House Committee on Energy and Commerce

BOBBY L. RUSH

1ST DISTRICT, ILLINOIS

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEES:

RANKING MEMBER, ENERGY
COMMUNICATIONS AND TECHNOLOGY

ASSISTANT WHIP



666

CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

WASHINGTON

2188 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-1301

CHICAGO

11750 SOUTH WESTERN AVENUE
CHICAGO, IL 60643-4732

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Received & Inspected

AUG 14 2017

FCC Mail Room

August 7, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554-0004

Dear Chairman Pai:

I write to express my grave concern over what I hope is an unintended consequence of your recent decision to abolish the federal "Lifeline Broadband Provider" designation process and instead require all such broadband Lifeline provider applicants to seek designation from individual state commissions. I represent one of the facilities-based applicants whose designation you rescinded in a Bureau order on February 3. It proposes to serve low-income residents on the South Side of Chicago with high-speed broadband on a Lifeline basis.

I agree with your view that the Communications Act reserves the authority to grant these Lifeline designations to the states. However, the service provider in my district has been advised by commissioners in Illinois that they cannot grant such designations because of FCC rule 54.201(j), which clearly states: "A state commission shall not designate a common carrier as a Lifeline Broadband Provider eligible telecommunications carrier." Therefore, Lifeline applicants are stuck in a regulatory "Catch-22": the FCC will not consider new broadband Lifeline designations on the basis that only the states may do so, and the states won't consider them because they are preempted from doing so by the FCC.

I would note that in your statements on March 29 and in recent letters to at least 15 of my colleagues that you stated that "new companies can enter the program using this process, and I encourage them to continue to do so" and "nor did the *Order* affect the designation of Lifeline broadband carriers by state commissions; that process proceeds apace... New companies can enter the program using this process, and I encourage them to continue to do so." Evidently, though, this is not true, because the FCC preemption rule remains in force, and state commissions will not move until the FCC formally abolishes it. I recognize that rulemaking is the standard way to abolish a rule, but am also cognizant that rulemaking might not happen in the near future due to your other priorities.

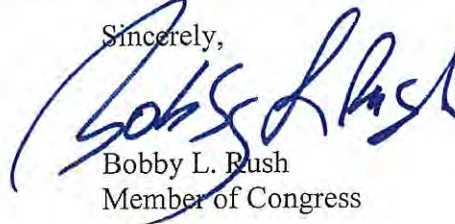
I also recognize your legitimate concerns regarding possible waste, fraud, and abuse by wireless resellers in the Lifeline program, and the problems noted in the recent GAO Report and in your recent directives to the universal service administrator. My constituent, however, is a facilities-

based provider and a certified Minority Business Enterprise with a 15-year track record. As long as this regulatory barrier remains in effect, underserved people on the South Side of Chicago and in communities all over America are being denied affordable broadband service under the Lifeline program.

I trust you agree that this is an anomalous and very unfair situation. Therefore, I ask your commitment to correct it immediately, either by initiating and completing the appropriate rulemaking before the end of this year, or by otherwise suspending the effectiveness of the state preemption rule. State commissions need a clear signal that they can go forward on a firm legal footing and my low income constituents should be able to start receiving this badly-needed and affordable high-speed broadband service through the Lifeline program without further delay.

I look forward to working with you to reach an equitable solution on this urgent problem. Should you or your staff have any questions please do not hesitate to contact my Chief of Staff, Yardly Pollas, at Yardly.Pollas@mail.house.gov or by telephone at (202) 225-4372.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bobby L. Rush", is written over the typed name and title.

Bobby L. Rush
Member of Congress

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

663

August 14, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street N.W.
Washington, D.C. 20554

Dear Chairman Pai:

We write to express our concern regarding reports that suggest favorable treatment of Sinclair Broadcast Group, Inc. (Sinclair) since you became Chairman of the Federal Communications Commission (FCC). These reports raise two overarching questions:

- Whether actions taken by the FCC under your leadership show a pattern of preferential treatment for Sinclair, and
- Whether a series of interactions between your office, the Trump Campaign and Trump Administration, and Sinclair demonstrate inappropriate coordination.

The FCC is an independent agency, and we are sending you this letter amid recent criticism of your commitment to independence as the Chairman of the FCC.¹ Given the press reports on this matter, we wanted to provide you the opportunity to address these reports and ask that you provide answers to our questions at the end of this letter so that we can better assess your actions regarding Sinclair, and recent related actions taken by the FCC.

I. Since the beginning of the Trump Administration, the FCC has taken a series of swift actions that have benefitted Sinclair.

The United States has maintained for decades a policy that restricts the number of viewers a single broadcast entity can reach nationwide so that the American public has access

¹ See, e.g., Brian Fung, *The FCC's independent chair is getting too cozy with the White House, critics say*, Washington Post (June 23, 2017).

to a diversity of local voices over the air. As the largest owner of television broadcast stations in the country, Sinclair had expanded to the limits of these FCC ownership rules. Since taking office, however, you have implemented a series of actions that ease these restrictions and allow Sinclair to expand its reach quickly. You have simultaneously proposed to allow the industry to adopt a new broadcast technology that will likely benefit Sinclair more than any other company.

a. The FCC eased ownership caps by reinstating the outdated “UHF Discount,” allowing Sinclair to quickly acquire more broadcast stations.

To ensure the American people have access to multiple voices over the air, Congress capped the number of viewers that any one broadcast entity can reach nationwide.² When implementing this cap under older analog technologies, however, the FCC recognized that stations using Ultra High Frequency, or UHF, channels faced technical limitations that prevented them from reaching as many viewers. As such, the FCC did not count these UHF stations as heavily against the nationwide cap.³ But the switch to digital television technology eliminated this technical difference, and the FCC, under the leadership of the prior FCC Chairman, removed this “UHF Discount” rule in 2016.⁴

Although analysts believed that Sinclair would not be permitted to make a major acquisition without the UHF discount in place, Sinclair nonetheless began exploring purchasing the second largest owner of broadcast stations, Tribune Media Company (Tribune).⁵

A few weeks after reports of this possible transaction, the FCC, under your leadership, took a party-line vote to reinstate the UHF Discount rule,⁶ despite your having acknowledged that “our nation’s transition from analog to digital television has eroded the basis for the UHF discount.”⁷ Sinclair noted in its recent 10-K filing that your reinstatement of this discount

² 47 CFR § 73.3555(e)(1); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004).

³ 47 CFR § 73.3555(e)(2)(i).

⁴ Federal Communications Commission, *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order, MB Docket No. 13-236, at ¶ 28 (rel. Sept. 7, 2016) (apps.fcc.gov/edocs_public/attachmatch/FCC-16-116A1.pdf).

⁵ Leon Lazaroff, *Tribune Media Rising on Deal Speculation Despite Obstacles to Sale*, TheStreet, Inc. (Mar. 6, 2017).

⁶ Federal Communications Commission, *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, MB Docket No. 13-236 (rel. Apr. 21, 2017) (https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-40A1.pdf).

⁷ Dissenting Statement of Commissioner Pai, *Re: Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order,

“would reduce our reach (for FCC purposes) to approximately 24% of U.S. households, which would expand our ability to make televisions [*sic*] station acquisitions in the future.”⁸ In May 2017 Sinclair announced, just two weeks after the FCC’s action, that it intended to purchase Tribune⁹ – a transaction that would result in a combined company reaching approximately 70 percent of American households.¹⁰

b. The FCC established an expedited timeline for its review of the proposed Sinclair-Tribune transaction, allowing Sinclair to grow as quickly as possible.

Sinclair officially filed its application to merge with Tribune at the end of June.¹¹ Days later, the FCC established a pleading cycle for the proceeding of just 30 days.¹² Even though the proposed transaction is between the two largest owners of broadcast stations, the FCC set a timeline for public comment that was shorter than the pleading cycles set for previous transactions.¹³

MB Docket No. 13-236 (rel. Sept. 7, 2016)
(https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-123A4.pdf).

⁸ Sinclair Broadcast Group, Inc., Form 10-K, Annual Report, at 15 (Feb. 28, 2017) (sec.gov/Archives/edgar/data/912752/000091275217000006/sbgi-20161231x10k.htm).

⁹ Alex Sherman, *Sinclair Buys Tribune in \$3.9 Billion Deal, Creating TV Goliath*, Bloomberg (May 7, 2017).

¹⁰ Sydney Ember and Michael J. de la Merced, *Sinclair Unveils Tribune Deal, Raising Worries It Will Be Too Powerful*, New York Times, (May 8, 2017).

¹¹ *Application of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations* (June 26, 2017) (https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.htm?context=25&appn=101759797&formid=315&fac_num=22201).

¹² Federal Communications Commission, *Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc. and Permit-But-Disclose Ex Parte Status for the Proceeding*, Public Notice, MB Docket No. 17-179 (July 6, 2017) (ecfsapi.fcc.gov/file/07060101701359/DA-17-647A1.pdf).

¹³ See, e.g., Federal Communications Commission, *Commission Seeks Comment on Application of AT&T and DirectTV to Transfer Control of FCC Licenses and Other Authorizations*, Public Notice, MB Docket No. 14-90 (Aug. 7, 2017) (apps.fcc.gov/edocs_public/attachmatch/DA-14-1129A1.pdf); Federal Communications Commission, *Commission Seeks Comment on Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. to Assign and Transfer Control of FCC Licenses*, Public Notice, MB Docket No. 10-56 (Mar. 18, 2010) (https://apps.fcc.gov/edocs_public/attachmatch/DA-10-457A1.pdf).

Critics assert that the public has received inadequate time to assess and respond to a deal of this magnitude. Within a week of the FCC's action, the agency received a Motion for Extension of Time – along with a request for additional information and documents – from parties with an interest in the proceeding.¹⁴ These parties contend that Sinclair's applications provide “insufficient information for the Commission to validate, let alone quantify, the claimed public interest benefits.”¹⁵

- c. **The FCC approved Sinclair's multimillion dollar deal to purchase stations owned by Bonten Media Group (Bonten), shortly after the FCC revoked a processing guidance that would have required close scrutiny of the transaction.**

The FCC granted the transfer of seven TV licenses from Bonten to Sinclair in various markets across the country,¹⁶ including in markets where Sinclair now holds sharing agreements.¹⁷ Sharing agreements allow a company like Sinclair to manage operational aspects of other stations that it does not own.

The FCC's approval of the Bonten deal came after you directed the Media Bureau to rescind – without explanation – its 2014 guidance on how the FCC scrutinizes license transfer applications that involve sharing agreements between broadcast stations.¹⁸ The 2014 guidance expressed the Media Bureau's concern that entities may essentially control more stations than the FCC's local ownership rules permitted, and outlined how the FCC should scrutinize transactions that include these agreements to ensure they would not risk “impair[ing] the

¹⁴ Motion of Dish Network, American Cable Association, and Public Knowledge for Additional Information and Documents and Extension of Time, *In the Matter of Application of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179 (Jul. 12, 2017) (ecfsapi.fcc.gov/file/10712432427229/Motion%20for%20Additional%20Information%20and%20Extension%20of%20Time.pdf).

¹⁵ *Id.* at 1.

¹⁶ Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Bonten Media Group LLC and Sinclair Television Group, Inc., Re: Application for Consent to Transfer Control of License and Request for Continued Satellite Authority, Application File No. BTCCDT-20170505ABL, DA 17-638 (Jun. 30, 2017).

¹⁷ KBVU JSA, KBVU SSA, and KBVU Option Agreement, Attachment 15, Application for Consent to Transfer License from Bonten Media Group, LLC to Sinclair Television Group, Application File No. BTCCDT-20170505ABL (May 5, 2017).

¹⁸ Federal Communications Commission, Media Bureau, *Rescission of March 12, 2014, Broadcast Processing Guidance Relating to Sharing Arrangements and Contingent Interests*, Public Notice, DA 17-130 (rel. Feb. 3, 2017).

existing licensee's control over station operations and programming" or be "otherwise contrary to the public interest."¹⁹

The FCC's approval of the Bonten transaction raises important questions, including whether the Commission's staff, without the previous guidance, was able to adequately scrutinize the impact of sharing agreements when reviewing the application. For example, after the Bonten approval, Sinclair now owns one of the five full-power TV stations in the Eureka, CA market,²⁰ KAEF-TV,²¹ but it controls another full-power station, through a Joint Sales Agreement and a Shared Services Agreement, as well as having a purchase option agreement for that station.²²

As shown by the effect in Eureka, one of the country's smallest TV markets, the FCC's approval of this deal raises questions about whether Sinclair has effectively circumvented the FCC's local TV ownership rules.²³ Other timing questions are also raised given that the FCC made its decision in less than two months after the filing of this \$240 million dollar deal.²⁴

d. The FCC has started a proceeding to allow TV broadcasters to begin using Next Gen TV – a technology whose primary patent-holder is Sinclair.

In addition to taking steps that allowed Sinclair to quickly expand its reach, the FCC also commenced a proceeding that would allow TV broadcasters – including Sinclair – to use a transmission standard, Next Gen TV, with very few consumer protections in place.²⁵ Some have raised questions about how consumers will be affected by this proposal,²⁶ such as

¹⁹ Federal Communications Commission, Public Notice, *Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests*, DA 14-330 (Mar. 12, 2014) (apps.fcc.gov/edocs_public/attachmatch/DA-14-330A1.pdf).

²⁰ TV News Check, TV Station Directory for Eureka, CA (accessed July 24, 2017) (<http://www.tvnewscheck.com/tv-station-directory/dma/192>).

²¹ See note 16.

²² See note 17.

²³ Federal Communications Commission, *FCC's Review of the Broadcast Ownership Rules* (accessed July 13, 2017) (transition.fcc.gov/cgb/consumerfacts/reviewrules.pdf).

²⁴ Sinclair Broadcast Group, Inc., *Sinclair Broadcast Group Announces Agreement to Purchase Bonten Media Group TV Stations*, PR Newswire (April 21, 2017).

²⁵ Federal Communications Commission, Notice of Proposed Rulemaking, *In the Matter of Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard* (GN Docket No. 16-142) at ¶ 2 (Feb. 23, 2017). [Hereinafter *Next Gen TV NPRM*]

²⁶ Statement of Commissioner Mignon Clyburn, *Re: Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142 (Feb. 23, 2017).

whether consumers will lose their signal,²⁷ or whether their viewer data will be monitored without government oversight.²⁸

Although the proposal for Next Gen TV came from various broadcast groups, Sinclair is the lead proponent of the technology.²⁹ For example, ONE Media 3.0, a wholly owned subsidiary of Sinclair,³⁰ has disclosed that it has at least six patents that are necessary to the Next Gen TV transmission standard.³¹ ONE Media 3.0 will provide licenses to those that will need to use the patents to implement the new standard.³² Reports suggest that the royalties from the licenses for these patents could be worth billions of dollars.³³

²⁷ The FCC is seeking comment on a simulcasting requirement for TV stations that decide to transition to Next Gen TV. The proponents of Next Gen TV have sought the ability to simulcast their existing signal on another broadcast station “serving a substantially similar community of license.” See *Next Gen TV NPRM*, supra n. 25, at ¶ 23. If the Commission adopts the proposal from proponents, some over-the-air consumers may not be able to receive the simulcast signal because they live outside of the other station’s service area. Further, the Commission has sought comment on whether to allow stations to lower the signal quality of simulcast signals (e.g. provide formerly HD signals in standard definition).

²⁸ Ben Munson, *Sinclair, One Media Will Use ATSC 3.0 to Collect User Data*, Fierce Cable (Nov. 1, 2016) (fiercecable.com/broadcasting/sinclair-one-media-will-use-atsc-3-0-to-collect-user-data); Sinclair Broadcast Group, Inc., *Sinclair and One Media 3.0 Profile Receiver Specifications and User Data*, PR Newswire (Oct. 31, 2016) (prnewswire.com/news-releases/sinclair-and-one-media-30-profile-receiver-specifications-and-user-data-300354162.html).

²⁹ Mike Dano, *With ATSC 3.0, TV Broadcasters Might Try to Steal Some Wireless Business After FCC’s Incentive Auction*, Fierce Wireless (Nov. 9, 2015) (fiercewireless.com/wireless/atsc-3-0-tv-broadcasters-might-try-to-steal-some-wireless-business-after-fcc-s-incentive); John Eggerton, *ONE Media Strikes Deal to Advance ATSC 3.0 Chipsets*, Broadcasting and Cable (Mar. 28, 2017) (broadcastingcable.com/news/washington/one-media-strikes-deal-advance-atsc-30-chipsets/164463).

³⁰ Sinclair Broadcast Group, Inc., *ONE Media 3.0, LLC to Launch Next Generation Broadcast Products and Services*, PR Newswire (Apr. 14, 2016) (prnewswire.com/news-releases/one-media-30-llc-to-launch-next-generation-broadcast-products-and-services-300251684.html).

³¹ ONE Media LLC ATSC Disclosure Statement and Licensing Declaration (Dec. 10, 2015) (atsc.org/wp-content/uploads/2015/12/One_Media_ATSC_Patent_Disclosure_121415.pdf).

³² *Id.*

³³ See, e.g., Doug Halonen, *Billions of \$ At Stake in ATSC Next Gen Effort*, TV News Check (Feb. 18, 2017) (tvnewscheck.com/article/83062/billions-of-at-stake-in-atsc-nextgen-effort).

II. Your interactions and the Trump Administration's interactions with Sinclair raise questions about the multiple FCC actions that have directly benefited the company.

Multiple press reports have suggested a favorable relationship existed between Sinclair and the Trump campaign, and now exists with the Trump Administration. This includes a report involving a meeting with President Trump and Sinclair's Executive Chairman, during which "potential FCC rules changes were discussed."³⁴

Reports further indicate that you, as Chairman of the FCC, have personally had a number of interactions both with the Administration and with Sinclair, as discussed below. Taken together, the volume of these interactions raise questions about the objectivity of recent FCC actions befitting Sinclair. Some of these reported interactions include the following:

- **After the election, President Trump reportedly met with the Executive Chairman and former CEO of Sinclair and discussed changing FCC rules to benefit Sinclair.** A news account stated that after the election, President Trump met with David Smith, Sinclair's Executive Chairman and former CEO. According to this report, "potential FCC rule changes were discussed" after President Trump asked Mr. Smith, "What do you need to happen in your business?"³⁵
- **Before you became Chairman of the FCC, you reportedly met with then President-elect Trump in New York.** Reports indicate that on January 16 of this year, you met with then-President-elect Trump in New York in a meeting that did not appear on your official calendar.³⁶
- **After you became Chairman of the FCC, you reportedly met with President Trump in the Oval Office.** In March, shortly after you became Chairman of the FCC, you met with President Trump in the Oval Office. An FCC spokesperson confirmed that the meeting occurred, but did not indicate what was discussed during the meeting.³⁷ When asked directly about your meetings with President Trump, you declined to disclose what you discussed with President Trump, saying "I am not at liberty to say."³⁸
- **The week after the election, you reportedly attended a company conference for Sinclair's general managers, during which you met with Sinclair's CEO.** A report

³⁴ Claire Atkinson and Josh Kosman, *Sinclair is close to buying all of Tribune's TV stations*, New York Post (Mar. 14, 2017).

³⁵ *Id.*

³⁶ Margaret Harding McGill, *A peek at Pai's calendar shows post-election agenda*, Politico Pro, Mar. 10, 2017; John Eggerton, *Trump Meets with FCC's Pai*, Broadcasting & Cable (Jan. 17, 2017).

³⁷ John Eggerton, *Updated: Trump Meets With FCC's Pai in Oval Office*, Broadcasting & Cable (Mar. 6, 2017).

³⁸ *Pai Declines to Discuss Trump Meetings*, TVNewsCheck (Mar. 8, 2017).

indicates that you attended on November 16, 2016 a Sinclair company summit for general managers at the Four Seasons Hotel in Baltimore.³⁹ During that event, you reportedly met with Sinclair's then-CEO David Smith.⁴⁰

- **You again met with both the current and former CEO of Sinclair in January.** According to a Politico report, in January of this year, you met with Sinclair's former-CEO, David Smith, as well as the newly-named Sinclair CEO, Chris Ripley.⁴¹
- **The President's campaign reportedly "struck a deal" with Sinclair to "secure better media coverage."**⁴² This arrangement came to light after the election, when Jared Kushner reportedly revealed that in exchange for access to then-candidate Trump and his campaign, "Sinclair would broadcast Trump interviews across the country without commentary."⁴³ Sinclair representatives have defended this arrangement by claiming that the Clinton campaign was offered the option for extended interviews with local anchors as well, but did not accept.⁴⁴
- **Sinclair hired former Trump Administration official Boris Epshteyn as a commentator and political analyst.** In April, Boris Epshteyn, who was "most recently Special Assistant to The President and Assistant Communications Director for Surrogate Operations for the Executive Office of President Trump," and formerly a "senior advisor to the Trump campaign," joined Sinclair to provide on-air political commentary.⁴⁵ Epshteyn's segments are "must-run" programming for Sinclair stations, with nine segments airing per week.⁴⁶ One report has criticized the segments

³⁹ Todd Shields, *Possible Tribune Suitor Sinclair Woos FCC's Pai on Regulations*, Bloomberg (Mar. 27, 2017).

⁴⁰ Margaret Harding McGill, *A peek at Pai's calendar shows post-election agenda*, Politico (Mar. 10, 2017).

⁴¹ *Id.*

⁴² Josh Dawsey and Hadas Gold, *Kushner: We struck deal with Sinclair for straighter coverage*, Politico (Dec. 16, 2016).

⁴³ *Id.* See also, Paul Farhi, *How the nation's largest owner of TV stations helped Donald Trump's campaign*, Washington Post (Dec. 22, 2017) (reporting that Sinclair-owned stations devoted broadcast time to 15 exclusive interviews with then-candidate Trump and also required stations to air "must-run" segments during the stations' morning or evening newscasts that were favorable to then-candidate Trump or that were critical of his opponent).

⁴⁴ See note 42.

⁴⁵ Cynthia Littleton, *Trump Spokesman Boris Epshteyn Joins Sinclair Broadcast Group as Political Analyst*, Variety (Apr. 17, 2017).

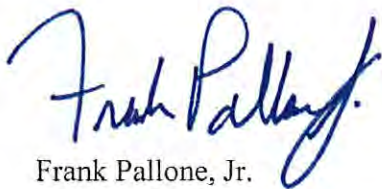
⁴⁶ *Id.*

as “propaganda,”⁴⁷ and reporting on Sinclair’s selection of “must-run” programming has raised “suggestions that Sinclair pushed right-leaning views.”⁴⁸

We hope this letter will serve as an opportunity to respond to reports suggesting that you have failed to exercise adequate independence as FCC Chairman and that may have resulted in the agency giving unusual and possibly preferential treatment to Sinclair.

In order to provide you an opportunity to respond to these assertions, we ask that you provide answers to the attached list of questions. Your assistance in this matter is greatly appreciated, and we look forward to receiving a response by August 28.

Sincerely,



Frank Pallone, Jr.
Ranking Member



Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology



Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations

⁴⁷ David Zurawik, *Sinclair taking perilous political path with Boris Epshteyn*, Baltimore Sun (July 14, 2017).

⁴⁸ Sydney Ember, *Sinclair Requires TV Stations to Air Segments That Tilt to the Right*, New York Times (May 12, 2017).

ATTACHMENT

Meetings/Correspondence:

1. In a July 25, 2017 hearing before the Energy and Commerce Committee's Subcommittee on Communications and Technology,⁴⁹ you had the following exchange with Ranking Member Pallone:

Q: My question to the Chairman is numerous press accounts have detailed how your policies have benefited Sinclair Broadcast Group. There has also been speculation that the Trump Administration has been in touch with your office about a number of these policies, so I wanted to give you a chance to respond to those allegations, and specifically, can you tell us what the Administration has said – either to you or anyone in your office – about Sinclair or the UHF discount?

A: Thank you for the question Congressman. No one in the White House or the Administration generally has made any representations to me about any FCC proceeding relating to that company. They've not asked me to take any particular action or expressed views on the merits, and certainly not with respect to the UHF discount.

Beyond making "any representations to [you] about any proceeding relating to that company," more specifically, has any White House official in the current Administration discussed Sinclair at all with you? If so, what was discussed?

Has any White House official in the current Administration discussed Sinclair at all with anyone in your office? If so, what was discussed?

2. Please provide a list of all the meetings either you or members of your office have had with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016. Did the Sinclair representatives discuss issues within the FCC's jurisdiction with you? If so, please provide a summary of the issues discussed.
3. Please provide all correspondence between you or members of your office and representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016.
4. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using a non-government email account? If so, please provide this correspondence.

⁴⁹ *Oversight and Reauthorization of the Federal Communications Commission: Hearing Before the House Committee on Energy and Commerce, Subcommittee on Communications and Technology, 115th Congress (July 25, 2017).*

5. Please provide a list of any meetings you had with President Trump, or President-elect Trump, since November 8, 2016. Did Mr. Trump discuss issues within the FCC's jurisdiction with you? If these meetings did occur, please provide a summary of the issues discussed. If these meetings did occur, did Mr. Trump discuss Sinclair Broadcast Group with you? If so, please provide a summary of the discussion.

Next Gen TV:

6. As discussed above, the FCC has started a proceeding to allow TV broadcasters to begin using Next Gen TV – a technology whose primary patent-holder is Sinclair – amid concerns about how consumers would be affected by the transition. How do you intend to protect consumers so that they do not lose broadcast TV signals as stations transition to Next Gen TV?
7. How do you intend to establish privacy protections for consumer data that will be collected using the Next Gen TV standard?

Sinclair-Tribune Proposed Merger:

8. As discussed above, several parties have expressed concerns that the FCC has established a pleading cycle that is too short for the FCC to determine whether the proposed Sinclair/Tribune transaction is in the public interest. How do you intend to ensure that the comment/pleading cycle for the proposed Sinclair/Tribune merger will allow for all interested parties to have adequate time to review, analyze, and comment on issues raised by the proposal?
9. Will you extend the comment/pleading cycle to mirror the time frames provided for in the AT&T-DirecTV merger? If so, please describe your plan. If you will not commit to this measure, please explain the basis for your decision.
10. Did representatives of Sinclair inform you or your office of a possible transaction with Tribune before the FCC voted to reinstate the UHF Discount? If so, please provide a copy of the written request, or a description of the oral request and the date of the relevant meeting or phone call.
11. You established a short timeframe within which the public could comment on Sinclair's proposed transaction with Tribune. Did representatives of Sinclair ever request an expedited FCC review of the proposed transaction, or request that the FCC review the proposed transaction within a particular timeframe? If so, please provide a copy of the written request, or a description of the oral request and the date of the relevant meeting or phone call.

Processing Guidance on License Transfer Applications:

12. Will you start a proceeding for the full Commission's consideration on how the Media Bureau should review license transfer applications with sharing agreements or financial agreements? Specifically, what is your plan to ensure that the Media Bureau has specific procedures to fully evaluate the impact of such transactions on the local markets and consumers? If you do not plan to put these specific procedures in place, please explain your reasons for not doing so.
13. Did the Media Bureau staff evaluate any sharing agreements or financial agreements for stations in the same markets as the stations that Sinclair recently acquired from Bonten?
14. Please provide a list of all pending TV license transfer applications, including data on transferor, transferee, acceptance date, days pending, whether sharing and/or financial agreements are involved, and primary application file numbers.
15. Please provide a list of all TV license transfer applications that have been granted since March 2014, including data on transferor, transferee, acceptance date, granted date, whether sharing and/or financial agreements were involved, and primary application file numbers.

Other Potential Proceedings:

16. In January, you met with Sinclair representatives and Armstrong Williams to discuss Joint Sales Agreement attribution rules.⁵⁰ Do you plan to start a proceeding – or include in any Broadcast Ownership Quadrennial Review – a proposal to reverse the current Joint Sales Agreement attribution rule for TV and/or radio stations?
17. Sinclair's CEO recently said to investors, "[w]e do expect this new FCC to tackle the ownership rules," and "[w]e're very optimistic about this new FCC and the leadership of Ajit Pai....we definitely anticipate that more consolidation will happen."⁵¹ Do you plan to start a proceeding – or include in any Broadcast Ownership Quadrennial Review – a proposal to relax the local TV ownership ("duopoly") rule? Do you plan to start a proceeding regarding the national TV ownership cap? If so, when?

⁵⁰ Letter from Colby M. May, Attorney, Howard Stirk Holdings, LLC and Howard Stirk Holdings II, LLC, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Re: Notice of Ex Parte Communication and Support of Expansion of Minority Ownership (Jan. 23, 2017) (ecfsapi.fcc.gov/file/10123518122404/20170123%20--%20HSH%20Ex%20Parte%20Notice.pdf).

⁵¹ See note 39.

August 15, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Pai:

We write regarding a matter of critical importance to the health and safety of the estimated 250,000 workers a year that work in close proximity to cellular antennas: exposure to radiofrequency (RF) radiation in excess of the Federal Communications Commission's (FCC) human exposure limits.

On September 17, 2015, we wrote to the FCC urging it to work with the Occupational Safety and Health Administration (OSHA) to ensure wireless carriers are employing the necessary measures to comply with the FCC's RF human exposure regulations and protect the hundreds of thousands of individuals working in close proximity to cellular antennas. The letter further urged the FCC to move quickly to finalize the Further Notice of Proposed Rulemaking (Further NPRM) adopted on March 27, 2013, proposing new requirements for licensees to demonstrate compliance with the FCC's exposure limits. To date, the FCC has failed to make progress on either request.

As you know, FCC regulations explicitly require licensees to protect all individuals from the hazards associated with excessive exposure to RF radiation, yet we remain concerned that licensees are not adhering to these requirements, particularly with respect to third party workers who perform their jobs near cellular broadcast antennas. In fact, in their communications with the FCC, the carriers have said they cannot "control" access to rooftop sites and have asked the Commission for a safe harbor from their responsibility to protect third-party workers. Even more concerning, recent moves by major insurers, including Lloyds of London, to exempt RF radiation from coverage in their policies demonstrate they believe overexposure is a significant threat.

As consumer demand for wireless services increases, wireless carriers are increasingly relying on leasing rooftop space and building access from property managers to house cellular antennas, including apartment buildings, schools, hospitals, places of worship, fire stations, and other public and private buildings. Unlike cellular towers, which are generally free-standing structures with restricted external access, rooftop-mounted antennas pose a unique occupational hazard to the numerous kinds of personnel whose job requirements compel them to work on rooftops.

At risk from rooftop and building mounted antennas are not only the wireless industry's trained RF technicians but also roofers, water proofers, electricians, carpenters, building maintenance personnel, HVAC technicians, painters, firefighters, and more. While wireless carriers take

important precautions to outfit their own employees with protective equipment and RF exposure monitoring units, and may even power down an antenna to eliminate the RF radiation hazard, their subcontractors and unaffiliated third party workers are not regularly afforded these same protections.

We call on you to finalize the NPRM and update us on the actions the FCC is taking to ensure individuals and workers in close proximity to cellular towers and antennas are protected from excessive RF radiation. We strongly urge you to work with your colleagues at OSHA to bring together the carriers and compel them to adopt a solution to address this serious issue that is in the interest of building owners, employers and unions, workers and others who are at risk of RF exposure from transmitting antennas.

We look forward to hearing what steps the Commission plans to take to ensure the safety of all workers from the danger of RF radiation exposure. We respectfully request a response no later than August 29, 2017.

Sincerely,



Richard Blumenthal
United States Senate



Anna G. Eshoo
Member of Congress

cc: The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission
The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission
The Honorable Thomas Galassi, Acting Deputy Assistant Secretary of Labor for
Occupational Safety and Health

687
Congress of the United States
House of Representatives
Washington, DC 20515-0506

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SACRAMENTO, CA 95814
(916) 498-5600
<http://matsui.house.gov>

August 22, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I write to follow up on the commitment you made to provide the members of the Energy and Commerce Committee with quarterly reports on the Federal Communications Commission's (FCC) efforts to implement the National Verifier for Lifeline Eligibility.

By providing low-cost phone or internet service, the Lifeline program is fundamental for Americans that are looking for work and trying to get back on their feet. The small subsidy provided by the program is equally important for schoolchildren needing to complete homework assignments and family members trying to stay connected across the country.

For those reasons, I was disheartened to hear that the FCC has made little progress toward implementing the National Verifier. Originally established in 2015, the National Verifier will provide a check on the Lifeline program to stifle any waste, fraud, or abuse in the program. The Verifier should make huge advances by ensuring that scarce Lifeline dollars go only to those that qualify.

I thank you for committing to providing the Committee with quarterly reports on the status of the FCC's efforts to implement the National Verifier. As part of those quarterly reports, I ask that, at minimum, the following information be included:

- All specific actions FCC staff are taking to assist the Universal Service Administrative Company in implementing the Verifier,
- Which states the FCC plans to include in the initial roll out of the National Verifier and when can we expect those states to come on line,
- Beyond the initial roll out, when the FCC expects additional states to come on line, including a table that lists each state and other jurisdiction where the Verifier will be implemented, the progress that the FCC has made working with that jurisdiction to implement the Verifier, and a target date when the FCC expects the Verifier to come on line in that state or jurisdiction, and

- The number of individuals that the Verifier will serve, as an aggregate, at each stage of the rollout.

We expect to receive the FCC first progress report by September 30, and every quarter thereafter until the FCC has implemented the National Verifier in all relevant jurisdictions. I appreciate your attention to this matter, and I look forward to reviewing your reports. Should you have any questions, please contact my office at (202) 225-7163.

Sincerely,



DORIS MATSUI
Member of Congress

Congress of the United States
Washington, DC 20515

September 18, 2017

760

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20536

Dear Chairman Pai,

We're writing in response to recent troubling press reports that a radio network funded by the Russian government may have used U.S. airwaves to influence the 2016 presidential election. We ask that you investigate these troubling reports and apply all applicable laws and regulations to enforce the public interest standard for licensed stations that broadcast this network.

An article published by the *New York Times Magazine* (9/13/17) titled "RT, Sputnik and Russia's New Theory of War" suggests that Sputnik, a radio network funded by the Russian government, was used as part of the Kremlin's effort to influence the 2016 presidential election. In Washington, D.C., listeners can tune their radios to 105.5 FM to hear Sputnik and the Russian government's effort to spread misinformation to influence U.S. policy and undermine our elections. This means the Kremlin's propaganda is being broadcast over a license granted by the FCC and the Russian government may be using our country's own airwaves to undermine our democracy.

The Communications Act of 1934 requires the FCC to take action to ensure broadcast licenses act in the public interest, convenience, and necessity. If Sputnik is in fact being used as a tool by the Russian government to undermine the United States and our free and fair electoral process, the station airing Sputnik is directly violating the public interest standard of the Communications Act.

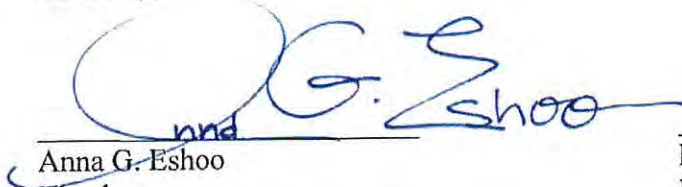
We've written to you previously regarding issues arising from the over-the-air television broadcast of Russia Today. Sputnik's alleged role in the Russian campaign to influence the 2016 election raises the same concerns and violates the public interest by giving a foreign government a microphone to spread propaganda. The Commission must look into the allegations that Sputnik is being used by the Russian government to disseminate misinformation and influence our elections and be prepared to take action. We therefore request that you provide answers to the following questions:

- (1) Is the FCC currently investigating whether broadcast licensees are contravening the public interest by retransmitting radio programming funding by the Russian government in an effort to influence U.S. politics and elections?
- (2) If not, will the FCC commit to undertaking such an investigation?

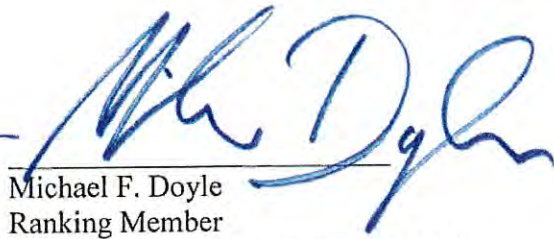
- (3) If the allegations in the above described reports are true, will the FCC commit to enforcing the public interest standard on stations that broadcast Sputnik, in accordance with applicable law and regulations?
- (4) If the FCC were to take action against a station being used to undermine our democracy, what specific steps could the FCC take?

We thank you for your attention to this critically important issue and ask for your timely response.

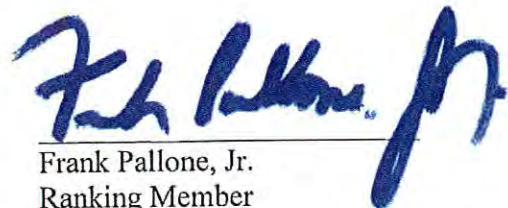
Sincerely,



Anna G. Eshoo
Member
Subcommittee on Communications &
Technology



Michael F. Doyle
Ranking Member
Subcommittee on Communications &
Technology



Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce

ONE HUNDRED FIFTEENTH CONGRESS
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House of Representatives
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2125 RAYBURN HOUSE OFFICE BUILDING
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Minority (202) 225-3641
September 29, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Pai:

As a follow-up to our August 14, 2017 letter, we write again to request that you provide answers to questions that have yet to be answered regarding Sinclair Broadcast Group (Sinclair). We intended our letter last month to serve as an opportunity for you to address the allegations that you and your staff provide preferential treatment to Sinclair. We received your September 8, 2017 letter, and we appreciate the efforts of Commission staff to collect the information included in your response, but the narrative you provided failed to respond to several of our specific questions and raised additional questions.

Your failure to provide the requested correspondence between your office and Sinclair representatives is most troubling. In your response to our letter, you note that “[c]orrespondence between me or members of my office and representatives of Sinclair have been the subject of multiple FOIA requests,” and that you are “sending such correspondence that has been produced to date in response to those FOIA requests.”¹ This is not fully responsive to the original request.

The Freedom of Information Act (FOIA) is specific in its instruction that FOIA is not to be used as authority to withhold information from Congress.² FOIA cannot be used as an excuse to limit or fail to provide the requested documents, nor does it preclude you from sending Congressional committees of jurisdiction information beyond what FOIA requires. We reiterate our request that you provide *all* correspondence between you or members of your office and representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, regardless of whether it is subject to a FOIA request.

¹ Letter from Ajit V. Pai, Chairman, FCC, to Rep. Frank Pallone, Ranking Member, House Committee on Energy and Commerce (Sept. 15, 2017).

² See 5 U.S.C. §552(d).

We continue to have concerns regarding the timing of (1) the reinstatement of the UHF discount rule, and (2) the review of the proposed merger between Sinclair and Tribune Media Company (Tribune). In your response to us, you claim that neither Sinclair nor Tribune informed you of a possible transaction prior to the FCC voting to reinstate the UHF discount rule, but news reports were already circulating in early March 2017 of a possible merger.³ The fact that the Commission released a draft UHF discount reinstatement order at the end of March for consideration at the April Commission Open Meeting continues to raise questions about whether the reinstatement of the UHF discount rule and the merger announcement were merely coincidental.

You also claim in your response letter to us that the initial comment periods for the proposed Sinclair-Tribune merger were adequate to provide the public with an opportunity to review and comment on the proposed transaction. Yet the day before you responded to our letter, the FCC released an information request to the applicants seeking additional details. It is concerning that it took the FCC so long – approximately 70 days into its review – to request basic information such as, but not limited to: (1) Sinclair's current national audience reach, (2) steps taken or planned to comply with the national ownership limit or the local television ownership rule, and (3) a complete list of all sharing agreements or options in which either applicant is a party in the DMAs where Tribune stations are located.⁴ Interested parties requested similar information nearly two months earlier when they filed a motion for information and an extension of time.⁵ A request that the FCC has never acted on.

³ See, e.g., Jessica Toonkel, Liana B. Baker, *Exclusive: Sinclair approaches Tribune Media about possible deal – sources*, Reuters (March 1, 2017) (<http://www.reuters.com/article/us-tribunemedia-m-a-sinclairbroadcast/exclusive-sinclair-approaches-tribune-media-about-possible-deal-sources-idUSKBN16843R?il=0>).

⁴ Letter to Mr. Miles S. Mason and Mr. Mace J. Rosenstein from Michelle M Carey, Chief, Media Bureau, *Re: Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc.*, MB Docket no. 17-179 (Sept. 14, 2017).

⁵ Motion of Dish Network, American Cable Association, and Public Knowledge for Additional Information and Documents and Extension of Time, *In the Matter of Application of Tribune Media Company and Sinclair Broadcast Group for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 17-179 (Jul. 12, 2017).

The Honorable Ajit V. Pai
September 29, 2017
Page 3

We ask that you respond to the attached list of questions by October 12. If you choose to respond in narrative form instead of providing specific responses to the individual questions, please note within your narrative the question that you are addressing.


Sincerely,



Frank Pallone, Jr.
Ranking Member



Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology



Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations

Enclosure

ATTACHMENT

Correspondence:

1. Please provide all correspondence between you or members of your office and representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016. [*Second Request*]
2. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using a non-government email account? If so, please provide this correspondence. [*Second Request*]
3. Have you or members of your office corresponded with representatives of Sinclair, including any lobbyists and lawyers representing Sinclair, since November 8, 2016, using social media messaging services or other messaging applications, such as, but not limited to, Facebook Messenger? If so, please provide this correspondence.
4. Please provide a copy of every FOIA request, both completed and pending, that relate specifically to Sinclair.

Sinclair-Tribune Proposed Merger:

1. When did you or your staff become aware of a possible transaction between Sinclair and Tribune?
2. When did you direct the Media Bureau to begin drafting an order to reinstate the UHF discount?
3. When did the Media Bureau begin to draft the September 14 Information Request letter to the applicants?
4. Will the Media Bureau seek the additional information requested by interested parties in the July 12, 2017 Motion for Additional information and Documents and Extension of Time?
5. Will the Media Bureau pause the informal 180-day clock, as it has done in previous merger reviews,¹ once the applicants respond to the information request in order for interested parties to have time to review and respond to the new information?

¹ The Commission has paused the 180-day informal clock in at least seven prior media-related merger reviews going back to 2003. We note that there was no pause in the clock for the Nexstar/Media General merger even though there was an information request. But that appears to be the exception, and likely is off-set by the fact the total time for that review was 329 days.

Processing Guidance on License Transfer Applications:

1. Will you start a process for the full Commission's consideration on how the Media Bureau should review license transfer applications with sharing agreements or financial agreements? Specifically, what is your plan to ensure that the Media Bureau has specific procedures to fully evaluate the impact of such transactions on the local markets and consumers? If you do not plan to put these specific procedures in place, please explain your reasons for not doing so. [*Second Request*]

Other Potential Proceedings:

1. Please provide a specific time frame for the Commission's consideration of revisions to the current TV Joint Sales Agreement attribution rule.
2. Please provide a specific time frame for the Commission's consideration of revisions to the current local TV ownership ("duopoly") rule.
3. Please provide a specific time frame for the Commission's consideration of revisions to the current national TV ownership cap.
4. Please provide a specific time frame for the Commission to start the next Quadrennial Review of Broadcast Ownership rules.

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
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Majority (202) 225-2927
Minority (202) 225-3641

October 6, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Chairman Pai:

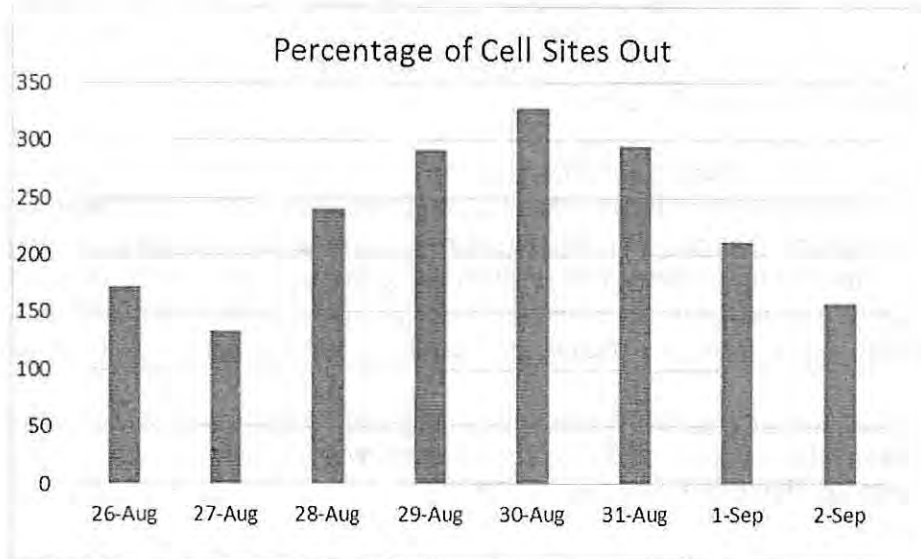
In the wake of hurricanes Harvey, Irma, and Maria, I write to urge you to conduct a Commission-level review of the resiliency of our nation's networks and the effect of the Wireless Network Resiliency Cooperative Framework following restoration efforts. Keeping our communications networks operational is critical. During natural disasters, people depend on our networks to call for help, monitor the status of loved ones, and coordinate restoration efforts afterward. And while much has been done to strengthen the resiliency of these networks, more is clearly needed. Even one dropped call in an emergency is too many.

One such recent effort to strengthen our networks is the Wireless Network Resiliency Cooperative Framework, which was the result of an agreement I struck with the wireless industry last year. As part of the Framework, wireless industry leaders committed to me to develop a central plan to improve disaster preparedness and response.¹ The Framework also includes requirements for making roaming and mutual aid arrangements available during a disaster so that consumers can be connected even when their own provider is down. Among other things, the Framework also allows the Federal Communications Commission (FCC) to publish wireless network outage data during disasters to give the public and officials a snapshot of the problematic areas.

Given the recent active hurricane season, the FCC has an obligation to review the state of our communications systems, the resilience of our 911 systems, and whether the Framework lives up to its potential. As part of this general review, the FCC should make use of the

¹ Letter from Joan Marsh, AT&T Services, Inc.; Scott Bergmann, CTIA; Charles McKee, Sprint; Steve Sharkey, T-Mobile; Grant Spellmeyer, US Cellular; William H. Johnson, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, (Apr. 27, 2016) (www.ctia.org/docs/default-source/fcc-filings/160427-final-network-resiliency-commitment-letter.pdf).

Framework's data to isolate the root causes of network outages. Policymakers need a better appreciation of which methods have worked and which have not to ensure we improve our future restoration efforts. Such an analysis would pay dividends. For example, after reviewing the Hurricane Harvey data made available by the Framework, it appears mobile network outages spiked on the third day following the storm.



These data are consistent with what I heard from wireless carriers, broadcasters, and cable operators during and after Hurricane Sandy tore through the northeast—that rebound outages result when network operators do not receive priority access to disaster zones to refuel the networks' backup generators. While I hope that Congress will pass my bill—the Securing Access to Networks in Disasters Act (the SANDy Act) soon, the Commission cannot rest in its efforts improve our communications systems.

A Commission-level evaluation will also help inform Congress and public safety officials about other places where we need to improve. For instance, following Hurricane Irma's landfall in Florida, Senators Nelson and Rubio used data from the Framework to identify where communications systems were down, allowing them to request that the Federal Emergency Management Agency prioritize efforts in those areas.² Additionally, I have been told that public safety officials have used the data provided by the Framework to help them assess the situation in their jurisdictions during disasters. On the other hand, I have also heard that some officials are unaware of these data. The FCC should therefore assess whether the Commission is doing

² Letter from Senators Bill Nelson and Marco Rubio to William B. Long, Administrator, Federal Emergency Management Agency (Sept. 12, 2017) (www.rubio.senate.gov/public/_cache/files/1bbdee62-c638-4b46-ac65-511b863c3236/E3CBA04DA03B8D1556234836DF6CD009.09.12.17-bn-mr-letter-to-fema-re-cell-service-assistance.pdf).

enough to make sure local officials are aware and taking advantage of the data made public under the Framework.

The Commission should also include an analysis of the effect of these disasters on 911 infrastructure. According to reports, numerous 9-1-1 call centers—or public safety answering points (PSAPs)—suffered outages in the wake of hurricanes Harvey, Irma, and Maria. The Commission must work to better understand what caused these outages and to ensure that call centers, carriers, their vendors, and the relevant 9-1-1 service providers are doing all they can to keep 9-1-1 functioning during a disaster.

Finally, my constituents better understood the effects of Hurricane Sandy on communications network in New Jersey when the full Commission held a field hearing near the site of the disaster after the storm. This hearing provided critical information about how to improve our systems and make them more resilient going forward. After restoration efforts have concluded, I urge you to consider using the field hearing in New Jersey as a model for how you can help the public better understand the outages caused by hurricanes Harvey, Irma, and Maria.

For those reasons, I urge the Commission to begin an evaluation of the resiliency of our nation's networks, in light of recent efforts, to understand what more can be done. As part of this review, I urge the Commission to:

- (1) Review how it can ensure the Wireless Network Resiliency Cooperative Framework is as effective as possible, including better informing public safety officials about the Framework;
- (2) Evaluate all of the data available to the Commission to better understand the root cause of wireless and wireline outages;
- (3) Evaluate all of the data available to the Commission to better understand the root causes of outages among PSAPs and relevant public safety service providers;
- (4) Review the effects recent disasters have had on our communications networks to identify what worked, what did not, and where we can improve;
- (5) Conduct field hearings to uncover what led to the outages caused by recent hurricanes and how the Commission can respond; and
- (6) Evaluate the potential options available to the Commission to address issues raised during its review.

The Honorable Ajit V. Pai
October 6, 2017
Page 4

Your assistance in this matter is greatly appreciated, and I look forward to receiving a response by October 27, 2017. If you have any questions, please contact the Democratic Committee staff at (202) 225-3641.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." with a stylized flourish at the end.

Frank Pallone, Jr.
Ranking Member

Cc: The Honorable Mignon Clyburn, Commissioner
The Honorable Michael O'Rielly, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Brendan Carr, Commissioner

Congress of the United States
Washington, DC 20515

952

November 8, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Pai:

We write to raise serious concerns regarding your proposal to essentially eliminate the existing broadcast TV ownership rules with virtually no public input. This action, taken by way of a Reconsideration Order, is an obvious attempt to evade the notice and comment requirements that should accompany a decision of this magnitude.

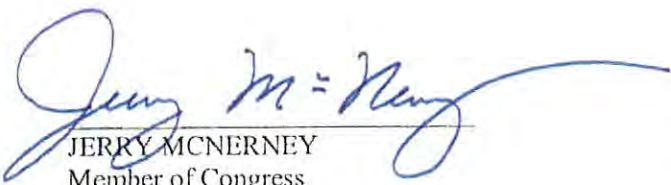
The draft you released on October 27 takes steps akin to a statutorily-required Quadrennial Review of these same rules. Yet the sweeping deregulation, done at the behest of Sinclair Broadcast Group, among others, will provide the public with almost no opportunity to offer input and relies on data from three years ago. Using such tactics is contrary to prior reviews by the Commission, shirks the Commission's duties under the Administrative Procedures Act, and is a disservice to the public interest.

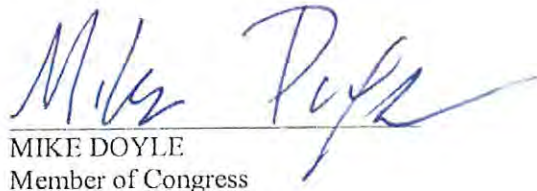
Americans care strongly about these issues, as evidenced by the high level of public participation in the Sinclair-Tribune merger. Aside from the parties to the applications, practically all of the public comments in that merger docket are strictly opposed due to concerns about consolidation and the impact on local news. The local TV ownership rule changes you propose to make in this Reconsideration Order effectively pave the way for Sinclair to merge with Tribune without any divestitures at the local level, but at a serious cost to diversity of viewpoint from local news outlets.

This path of least resistance to approval appears only to benefit the few at the cost to the many. Americans rely on their local TV broadcasters for local and diverse content. It is frightening to imagine what the future holds if the Commission votes in favor of your proposal. There will be few boundaries for Sinclair—or other broadcasters—from consolidating the use of these important public airwaves into fewer and fewer hands.

We request that you seek additional public comment on these proposed rule changes. A transparent and open process will allow for a more thorough debate and better inform the Commission with current data before it takes such dramatic action.

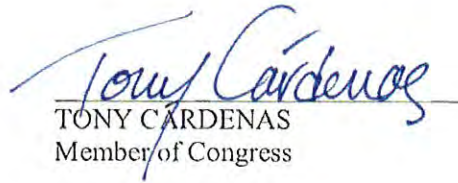
Sincerely,


JERRY MCNERNEY
Member of Congress


MIKE DOYLE
Member of Congress



DEBBIE DINGELL
Member of Congress



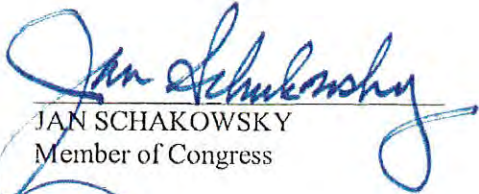
TONY CARDENAS
Member of Congress



YVETTE D. CLARKE
Member of Congress



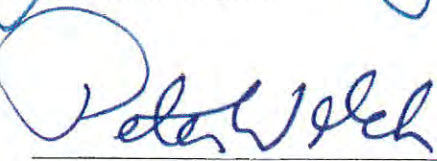
BEN RAY LUJAN
Member of Congress



JAN SCHAKOWSKY
Member of Congress



PAUL D. TONKO
Member of Congress



PETER WELCH
Member of Congress



BOBBY L. RUSH
Member of Congress



JOSEPH P. KENNEDY, III
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ELIOT L. ENGEL
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Member of Congress

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HOUSE COMMITTEE ON
ENERGY AND COMMERCE

SUBCOMMITTEES ON
COMMUNICATIONS AND TECHNOLOGY
DIGITAL COMMERCE AND CONSUMER PROTECTION
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November 8, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

This letter is regarding what could be an exciting new broadcast technology standard, ATSC 3.0, and the implications it will have on consumers across the country. Broadcasters and other stakeholders deserve credit in developing this new standard that will undoubtedly bring significant benefits to consumers including more localized safety warnings and improved picture quality. Enhancing these capabilities will help our nation's broadcasters perform their critically important mission of providing the American people with free over-the-air programming.

However, ATSC 3.0 is also much more comprehensive than just improving picture quality and safety warnings. It is my understanding that the new standard also contemplates targeted advertisements that would be "relevant to you and what you actually might want to see." This raises questions about how advertisers and broadcasters will gather the demographic information from consumers which are necessary to do targeted advertisements, and what privacy protections will be in place for consumers. It is also my understanding that ATSC 3.0 will not be backwards-compatible, which means consumers will be forced to replace their televisions if it is widely adopted.

While there are undoubtedly critical benefits of ATSC 3.0, we deserve to have a complete understanding of the overall impacts of this new standard. We should be having a robust dialogue about the privacy implications of this new standard as well as ensuring we are doing everything possible for consumers in any transition. This is critically important and very timely as the Commission is set to consider a Report and Order and Further Notice of Proposed Rulemaking authorizing the use of ATSC 3.0 during the Open Commission Meeting on November 16, 2017. Although privacy concerns were raised in the record, it was not addressed at all in the draft order released by the Commission. In fact, the word "privacy" is not even mentioned a single time in the entire draft order the FCC will soon take up. You further noted in recent testimony that the FCC is only considering the technical standards associated with ATSC 3.0, but this technical review cannot be separated from a review of privacy and security concerns. That is in fact the meaning of the phrase "privacy and security by design."

This continues a troubling pattern of indifference at the FCC towards consumer privacy. To better address these concerns, I respectfully request answers to the following questions so that we can better understand the impacts of ATSC 3.0 on the consumer and how the FCC intends to consider privacy issues moving forward.

1. You noted in response to my questions at a recent FCC Oversight Hearing before the House Committee on Communications and Technology that the Federal Trade Commission (FTC) will have a role in overseeing the privacy of ATSC 3.0 users. Has FCC staff coordinated with FTC staff to discuss these issues to ensure the FCC does not approve a technical standard that fails to adequately protect consumers' privacy or security?
2. It is my understanding that there are several different business models for targeted advertisements under ATSC 3.0. One model includes building transmitters similar to cell towers around the DMA to do regional advertising. I understand this is a very capital intensive process with a high operating expense, but that it would not require the collection of personal information from consumers. Is that correct? If no personal information from consumers is required, what standards will be applied to determine whether my constituents would choose to see targeted advertisements or not?
3. It is my understanding that a second business model for targeted advertisements involves delivery via the internet. In this scenario will the age, sex, address, and other demographic information would be collected in order to deliver targeted advertising? Would consumers have to provide consent in order for their data to be collected? Could they choose not to provide their demographic information and not receive targeted advertisements but still receive the enhanced picture quality and public safety communications? If a consumer decides to provide their personal information, who is responsible for protecting it?
4. It is my understanding that another business model would use an encrypted signal, even for over-the-air television broadcasts that have traditionally been free. Would this require consumers to use some sort of encryption key to access the signal? Would such a key require a consumer to enter their age, address, gender, and other demographic information? If the free over-the-air signal is encrypted and needs demographic information from a consumer to access it, do you still consider this service to be "free" in your opinion?
5. There have been media reports that ATSC 3.0 would allow for better collection of audience data and would use this information as a sales tool for the advertisers, rather than relying on Nielsen or other measurement data. Will the new standards permit broadcasters to collect data on age, sex, income, address, or any other personal information? How will they be permitted to use this information? Will consumers be able to opt-out of having their data collected for this purpose?

6. It appears that new ATSC 3.0-capable TV sets could be susceptible to hacking, malware, and other potential computer viruses that could lead to predatory advertising instead of legitimate commercials. Is there anything contained in the proposal to address this potential problem?
7. How many TV sets are in the country today, and what will happen to them when ATSC 3.0 is deployed? How many TV sets will need to be replaced when broadcasters are not required to carry both the current ATSC 1.0 signal and the new ATSC 3.0 signal? What would you estimate the approximate cost to consumers to replace these sets?

Thank you for your attention to these important issues. Answers to my questions will help give the American people confidence that we are adequately considering all of the impacts this new standards will have on consumers. I look forward to receiving your response and please do not hesitate to contact me directly if you have any questions or concerns.

Sincerely,



Debbie Dingell
Member of Congress

CC: The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission
The Honorable Michael O'Reilly, Commissioner, Federal Communications Commission
The Honorable Brendan Carr, Commissioner, Federal Communications Commission
The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission
The Honorable Greg Walden, Chairman, House Committee on Energy and Commerce
The Honorable Frank Pallone, Ranking Member, House Committee on Energy and Commerce

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

976

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

November 15, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I write to urge the Federal Communications Commission (FCC) to protect federal funding for rural broadband deployment through its High-Cost program. The FCC's Inspector General and others note that the FCC does not have the dedicated resources necessary to police the program.¹ By diverting resources away from the protection of the bipartisan High-Cost program, the FCC is undermining rural America's access to high-speed internet, and that must stop.

This issue came into focus as part of an investigation I began into how the High-Cost program operates today following calls to use the High-Cost program as a conduit for broadband infrastructure legislation. I wrote to your office, your fellow commissioners' offices, the Universal Service Administrative Company (USAC), the FCC's Office of the Inspector General, and the Government Accountability Office (GAO). As a result of several high-profile abuses of the program, GAO will soon begin a full review of how it is being run. I had hoped the Commission would also act by now to remedy the shortcomings referenced as part of my original inquiry. But the FCC has not, and so I write to urge you to immediately prioritize fixing the High-Cost Fund.

The attention of the full Commission is necessary, as the FCC's Inspector General provided the disturbing report that the problems in the program are extensive. The Inspector General notes that he "has neither the capacity nor the capability to conduct an aggressive program to ferret out waste, fraud, and abuse committed by the approximately 800 service

¹ Letter to Ranking Member Frank Pallone, Jr. from FCC Inspector General David L. Hunt at 3 (June 12, 2017); *see also* Letter to Ranking Member Frank Pallone, Jr. from FCC Commissioner Clyburn at 1 (June 9, 2017) (hereinafter Clyburn Letter).

providers that will continue to receive funding through [the legacy High-Cost program].”² He goes on to note that since “the elimination of the Accounting and Audits Division at the Commission years ago, there are few if any individuals working at the Commission possessing th[e] fount of knowledge,” needed to address fraud in the program.³ The Inspector General’s office has even had difficulty getting Assistant United States Attorneys to bring False Claims Act cases under the High-Cost program. He notes, “when income tax laws are easier to tackle than FCC accounting rules, the problem becomes clear!”⁴

While the Inspector General’s letter is surprising in the breadth of its assessment of the problems, the fact is that the program’s issues were well-known. In my original letter, I specifically noted the FCC’s nearly \$50 million Notice of Apparent Liability against Sandwich Isles Communications Inc. (Sandwich Isles).⁵ Sandwich Isles abused the High-Cost program for more than a decade all while Sandwich Isles impermissibly overcompensated its leadership.⁶ I agree with your assessment that this abuse was a “disgrace,”⁷ especially since the FCC would not have uncovered it without help from outside organizations.⁸ But Sandwich Isles is not alone. One carrier with only three full-time employees used High-Cost dollars to purchase four trucks, four all-terrain vehicles, two snowmobiles, and one 26-foot fishing boat.⁹ Another carrier used High-Cost money to send a general manager’s relative to college,¹⁰ and yet another tapped the program to fly its general manager’s spouse and the spouse of a *potential employee candidate* across the country to attend oral arguments in a court case about the program itself.¹¹

² Letter to Ranking Member Frank Pallone, Jr. from FCC Inspector General David L. Hunt at 3 (June 12, 2017).

³ *Id.*

⁴ *Id.*

⁵ See Federal Communications Commission, *Sandwich Isles Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 16-165 at ¶3 (rel. Dec. 5, 2016) (hereinafter *Sandwich Isles Order*).

⁶ *Id.* at ¶40-42.

⁷ Federal Communications Commission, *All Universal Service High-Cost Support Recipients are Reminded that Support Must be Used for Its Intended Purpose*, Public Notice, FCC 15-133 at 5 (rel. Oct. 19, 2015) (hereinafter *High Cost Public Notice*).

⁸ See Clyburn Letter, *supra* note 1.

⁹ Federal Communications Commission, *Adak Eagle Enterprises, LLC and Windy City Cellular, LLC*, Order, WT Docket No. 10-90, DA 13-1578 at ¶38 (rel. July 15, 2013).

¹⁰ Federal Communications Commission, *Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, Order and Order on Review, WT Docket No. 10-90, FCC 16-94 at ¶20 (rel. July 20, 2016).

¹¹ *Id.*

As Commissioner Clyburn noted, the FCC's current rules do not "prohibit recovery of universal service moneys for things like personal mortgages or golf memberships."¹² She also pointed out that "there is currently no explicit rule prohibiting a high-cost recipient from buying a Picasso and recovering that 'cost' from the [program]."¹³ Similarly, Commissioner O'Rielly acknowledges that the FCC needs to "further clarify which practices or costs may not be recovered through [the program]."¹⁴

Despite these examples of abuse and bipartisan agreement among your colleagues, the FCC has not moved to complete its proceeding to reign in these extravagant costs in the ten months you have been Chairman.¹⁵ Instead, you have focused almost exclusively on the smaller programs within the Universal Service Fund (USF) program—programs that the FCC had already taken steps to update. When it comes to the potentially widespread problems in the largest USF program, the FCC has issued only a public notice to remind carriers of what expenses are allowed.¹⁶ That simply is not enough.

For those reasons, I urge the Commission to take action immediately to protect this program pursuant to the authority granted to it by Congress. Additionally, I request that you fully and completely cooperate with GAO's investigation as it gets underway. Should you have any questions regarding this letter, please contact the Democratic Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Ranking Member

¹² See Clyburn Letter, *supra* note 1.

¹³ *Id.*

¹⁴ Letter to Ranking Member Frank Pallone, Jr. from FCC Commissioner O'Rielly at 1 (June 14, 2017).

¹⁵ Federal Communications Commission, *Connect America Fund*, Further Notice of Proposed Rulemaking, WT Docket No. 10-90, FCC 16-33 at ¶327 (rel. Mar. 30, 2016).

¹⁶ High Cost Public Notice, *supra* note 7.

The Honorable Ajit V. Pai
November 15, 2017
Page 4

Cc: The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission
The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission
The Honorable Brendan Carr, Commissioner, Federal Communications Commission
The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission
The Honorable David L. Hunt, Inspector General, Federal Communications Commission
The Honorable Gene L. Dodaro, Comptroller General of the United States, U.S.
Government Accountability Office

Congress of the United States
Washington, DC 20515

November 15, 2017

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Pai:

We urge the Federal Communications Commission (FCC) to halt its effort to cut off support for low-income, tribal families' phone and internet service through its proposed order to change the Tribal Lands Lifeline Program. For nearly two decades the FCC's tribal Lifeline enhancement has helped underserved families in tribal areas afford phone, and more recently, internet service; the FCC is now considering undoing much of that good work. This action would further disconnect tribal areas, widening the digital divide in tribal communities. Even worse, according to the National Congress of American Indians the FCC failed to engage in meaningful consultation with impacted tribes on these proposed changes to the Lifeline program.

The proposed order would discontinue support for Lifeline recipients served by a wireless reseller, reducing access for thousands of tribal families who rely on the program. In the Tribal Lands Lifeline Program, these resellers offer service to 69 percent of general Lifeline recipients and 76 percent of wireless Lifeline recipients. Enacting an order that could affect a significant number of people with wireless service with such short notice could harm thousands of families, and we urge the Commission not to take this action.

The proposed order would also cut off support for tribal families living in urban areas. Congress codified the Lifeline program to serve low-income individuals everywhere, not just in rural areas. Our nation has a trust responsibility to ensure the cultural survival, well-being, and sovereignty of tribes and tribal members. We urge the Commission to rethink its course of action and honor the federal trust responsibility to tribes whether they live in urban or rural areas.

Finally, this order proposes to require an independent certification that individuals utilizing the Tribal Lands Lifeline Program in fact live on tribal land. While it is intended to improve integrity within the program, this proposal could have detrimental unintended consequences. For instance, many tribal residents use descriptive addresses rather than traditional postal addresses, and this order could punish these deserving tribal residents for following their tribal custom. The FCC

has an obligation to find an alternative way to address this issue without risking Lifeline support for underserved, tribal members.

We are disappointed that the Commission has taken the approach of testing dramatic changes to the Lifeline program on tribal members. We urge the Commission to reconsider this policy experiment and engage in meaningful consultation with tribes before cutting off support for individuals on tribal land. I look forward to hearing from your office. Please contact Ross Arnett at (202) 225 - 5330 in my office if you have additional questions.

Sincerely,

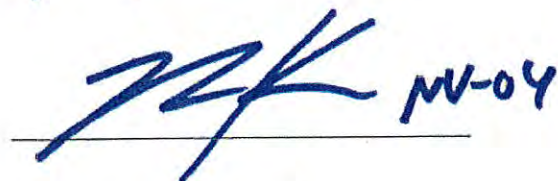


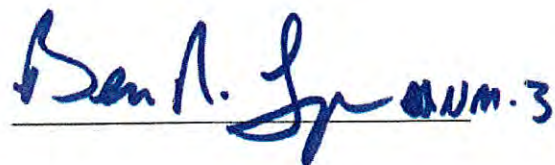
Raul Ruiz, M.D.
Member of Congress



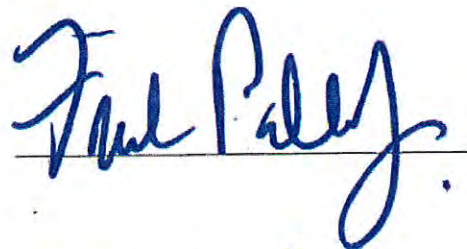
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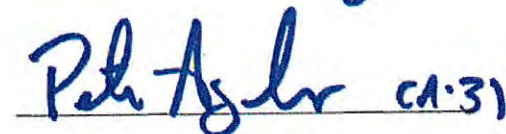
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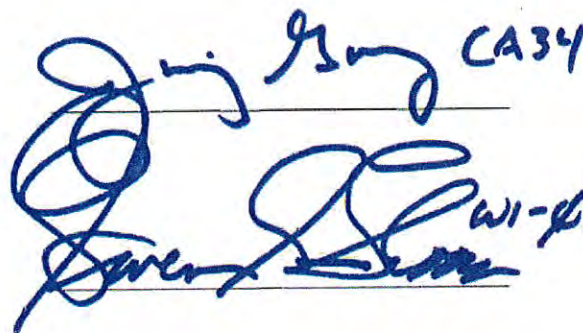
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 CA-34

 WI-84

 MI-5

Carol S. Maloney -
D. S. Neal MA-1

Tony Cardenas CA-29

Pres. C. Huelskamp

Jon Schalowsky IL-9

Jim H. Murray CA-9

Katherine Clark MA-5

P. L. R. LA-02

Yvette W. Clarke

Lucille Roybal-Allard

JOAQUIN CASTRO TX-20

Thomas R. Suozzi NY-3

Jim Hahn CA-20

Dan Claitor FL-9

Paul G. MA-7

Joe Beatty

Walter Watson

Jedediah Bering Johnson

PETER WELCH
AT-LARGE, VERMONT

CHIEF DEPUTY WHIP

HOUSE DEMOCRATIC
STEERING & POLICY COMMITTEE

COMMITTEE ON
ENERGY AND COMMERCE

COMMITTEE ON
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REFORM

57

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January 22, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I write to urge you not to act on recommendations from the Broadband Deployment Advisory Committee (BDAC) until the group reaches a consensus on how best to spur broadband deployment and define the Commission's goal of bringing "reasonably comparable" broadband service to rural America.¹ Improving broadband access for the millions of Americans who lack adequate service is critical and the Federal Communications Commission (FCC) would be better suited to address this issue with a unified Committee position.

Broadband is a vital resource for all Americans, and the FCC must do everything it can to speed the deployment of broadband in unserved and underserved parts of the country. Indeed, the principle of universal service is a cornerstone of the Communications Act.² I am concerned, nevertheless, that without consensus among the experts that comprise the BDAC, the FCC will fall short of its goals.

In particular, I was disturbed by reports that BDAC leadership suggested that the BDAC move ahead without reaching a consensus of working group members.³ The value of an advisory group is in its ability to draw experts with disparate perspectives to give the Commission the best advice possible. When recent Commission advisory committees have issued recommendations prematurely and without consensus among their experts, subsequent actions have created unnecessary confusion and division on policy matters. In short, for the BDAC to be a successful policy instrument, it must function as a consensus body.

¹ 47 U.S.C. § 254(b)(3).

² See generally 47 U.S.C. § 254.

³ *BDAC Approves First Recommendations, But Disagreements Surface*, Communications Daily, (Nov. 13, 2017) ("We don't have unanimous consent . . . and I don't anticipate that we will, and that's fine. What we hope we will be able to provide you in January will be something that a Majority of our members have approved.").

The Honorable Ajit V. Pai
January 22, 2018
Page 2

In addition, I reaffirm my request that the Commission use the BDAC⁴ as a tool to help define the FCC's statutory mission to provide "reasonably comparable" service for rural Americans. When you originally chartered the BDAC, I wrote to your office to support your effort and to request that you task the BDAC with defining what it will mean to have successfully deployed broadband in rural America.⁴ I still believe the BDAC should undertake and complete that important work.

For those reasons, I request that you require the BDAC to continue its work until it finds consensus and until it defines what it will mean to have reasonably comparable broadband service in rural areas. I appreciate your assistance with this inquiry. Should you have any questions regarding this request, please contact Patrick Salalin in my Office at (202) 225-4115.

Sincerely,



Peter Welch

Member of Congress

Cc: The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission
The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission
The Honorable Brendan Carr, Commissioner, Federal Communications Commission
The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

⁴ Letter from Peter Welch, Member of Congress, et. al., to Ajit Pai, Chairman, Federal Communications Commission (Feb. 7, 2017) ("We therefore urge you to task the Broadband Deployment Advisory Committee to . . . define successful broadband deployment in rural American before moving on to more detailed policies").

Congress of the United States
Washington, DC 20515

January 29, 2018

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554-0004

Dear Chairman Pai:

We write to inquire about the Federal Communications Commission's (FCC) decision to postpone the rollout of the National Lifeline Eligibility Verifier (National Verifier). We have high expectations for the National Verifier to improve and streamline the Lifeline program. The timing of the Commission's announcement to delay implementation of the Verifier, however, troubles us.

As you are aware, Committee Members from both parties have requested periodic substantive updates on the progress of the National Verifier rollout over this past year. Despite your repeated public commitments to provide such updates, we have yet to receive any.¹ Instead, just five weeks after you testified that the Verifier's progress was on track,² you announced that it was in fact delayed.³

We are concerned that this delay was avoidable and that your inability to provide more accurate testimony may demonstrate a lack of adequate oversight of the process by the Commission. For instance, the Commission has blamed the delay on a lack of understanding of how to comply with the Federal Information Security Modernization Act (FISMA). Yet, Members of this Committee stressed the importance of the Commission following FISMA last summer when the Commission

¹ House Committee on Energy and Commerce, *Hearing on Oversight and Reauthorization of the Federal Communications Commission*, 115th Cong. (July 25, 2017); House Committee on Energy and Commerce, *Hearing on Oversight of the Federal Communications Commission*, 115th Cong. (Oct. 25, 2017).

² *Id.*

³ Federal Communications Commission, *Wireline Competition Bureau Announces Postponement of Initial Launch Date of the National Lifeline Eligibility Verifier*, WC Docket No. 11-42 (Dec. 1, 2018).

alleged it had suffered a DDoS attack.⁴ If the Commission had provided us the substantive updates we requested, the public may have learned of these problems earlier. The Commission's lack of diligence overseeing this important work has raised concerns that other issues still may yet to be identified.


To better understand what led to the Commission's decision to delay the National Verifier rollout and how the Commission plans to oversee the development going forward, I ask that you provide responses to the following requests:

1. Please provide a comprehensive list of proactive efforts you have taken as Chairman, if any, to ensure that the National Verifier is deployed on time in all U.S. states and territories.
2. Please provide a comprehensive list of what proactive efforts FCC staff have taken, if any, to ensure that the National Verifier is deployed on time in all U.S. states and territories.
3. Please provide the Commission's strategic plan to ensure that the National Verifier is deployed on time going forward.
4. Please provide a list of dated benchmarks detailing when the Commission plans to meet legal, practical, or deployment related goals for fully implementing the National Verifier on time in all U.S. states and territories.
5. Please provide the detailed status report on the Commission's efforts to deploy the National Verifier requested in July and again in October.

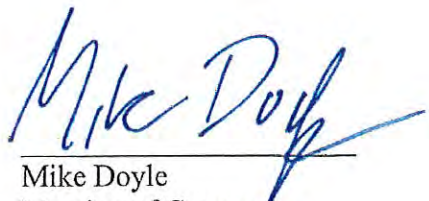
We appreciate your assistance in this matter, and request that you provide responses by no later than February 8, 2018. Please don't hesitate to contact my office with any questions.

Sincerely,


Bobby L. Rush
Member of Congress


Frank Pallone Jr.
Member of Congress

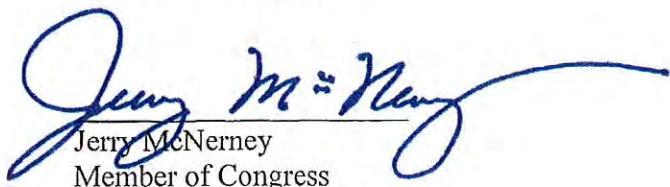
⁴ Letter from Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, et. al., to Ajit V. Pai, Chairman, Federal Communications Commission, Mignon L. Clyburn, Commissioner, Federal Communications Commission, and Michael O'Rielly, Commissioner, Federal Communications Commission (June 26, 2017).



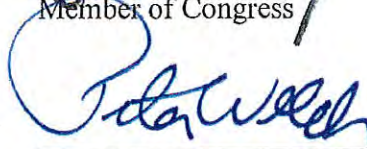
Mike Doyle
Member of Congress



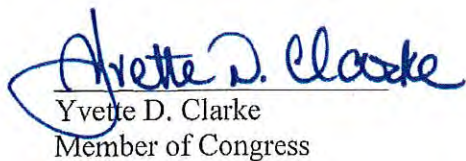
G.K. Butterfield
Member of Congress



Jerry McNerney
Member of Congress



Peter Welch
Member of Congress



Yvette D. Clarke
Member of Congress

ONE HUNDRED FIFTEENTH CONGRESS
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House of Representatives
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February 13, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

Dear Chairman Pai:

We write to request information that will help both us and the public better understand how the Federal Communications Commission (FCC or Commission) managed the record in its recent net neutrality proceeding.¹ This proceeding attracted unparalleled public attention, with a record 24 million public comments.² Yet the net neutrality docket is also notoriously replete with fake comments,³ even including submissions from Russian email addresses.⁴ This docket raises novel questions about how an agency can properly handle and interpret the public's feedback to make sound policy decisions.

The Commission has a responsibility under the Administrative Procedure Act to fully review and respond to significant comments filed in its record. When taking any agency action, the FCC bears the burden of demonstrating that its analysis is supported by the record, and that it has fully engaged with the American public by ensuring their voices are heard. Giving the public an opportunity to comment in a proceeding such as this one is crucial not only to ensure

¹ Federal Communications Commission, *Restoring Internet Freedom*, WC Docket No. 17-108 (rel. Jan. 4, 2018) (hereinafter "FCC 2018 Order").

² *Id.* at ¶ 19; *Id.* at 538, Dissenting Statement of Commissioner Jessica Rosenworcel ("To date, nearly 24 million comments have been filed in this proceeding. There is no record in the history of this agency that has attracted so many filings.").

³ *Millions of Net Neutrality Comments Were Faked. Turns Out Mine Was One*, USA Today (Dec. 6, 2017).

⁴ *Russian Bots Target FCC in Attempt to Get Net Neutrality Repeal*, NY Post (Nov. 22, 2017).

the FCC can consider the full impact of its proposal, but also to give the public confidence in the agency's procedures.⁵

Unfortunately, the FCC's Order gave scant detail about how it approached its unprecedented docket, tucking all description of the process into a few paragraphs at the end of a lengthy order. While we may not support the outcome of this proceeding, we hope you agree with us that transparency in the process is crucial. In order to restore public confidence in the integrity of the process and give the American people a better understanding of how the FCC analyzed the comments filed in this proceeding, we request that you provide us information on how the agency reviewed the public comments. Please answer the following questions no later than March 6, 2018.

1. The Commission has never handled a docket of this size before or one with so many fraudulent filings. What public process did the Commission conduct to determine how to handle these novel issues? How did the Commission generate any guidelines it provided to staff working on this proceeding? Please provide any guidelines and internal legal analysis to support any guidelines provided to staff.
2. The FCC's Order notes that the Commission did not rely on "comments devoid of substance," or "non-substantive comments."⁶ What analysis did the FCC conduct to determine which comments were "devoid of substance" or "non-substantive?" Please provide any guidelines provided to staff who made these determinations.
3. According to Commissioner Clyburn, the Order does not cite a single consumer comment.⁷ How many consumer comments were filed in the record? Why did the Commission decide not to respond to any of these comments?
4. Chairman Pai has stated that comments filed from Russian email addresses were in favor of net neutrality.⁸ Did the Commission conduct an independent analysis to support this determination? Please provide any data or analysis used to support this claim.
5. The FCC has refused to work with New York Attorney General Eric Schneiderman to investigate fraudulent use of Americans' identities in the record. Please explain why the FCC decided not to cooperate with this criminal investigation. Please provide any

⁵ Letter from Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, et al., to Ajit V. Pai, Chairman, Federal Communications Commission, et al. (June 26, 2017).

⁶ See note 1, FCC 2018 Order at ¶ 344.

⁷ *Id.* at 223, Dissenting Statement of Commissioner Mignon L. Clyburn.

⁸ *FCC Net Neutrality Process 'Corrupted' by Fake Comments and Vanishing Consumer Complaints Officials Say*, Washington Post (Nov. 24, 2017).

internal communications about this decision and any legal analysis generated to support this decision.

6. A number of U.S. citizens claim that comments were falsely filed using their names. The FCC's Order notes that the FCC is under "no legal obligation to adopt any 'procedural devices' . . . such as identity-verification procedures."⁹ While it may not have an obligation, does the FCC have the authority to adopt such procedural devices? If so, why has the FCC chosen not to adopt such procedures?
7. How did the FCC determine whether comments were filed by the entity with whom the comments were associated? For instance, when the FCC cited a comment from an internet service provider, what did the Commission do to determine that the company in fact filed those comments? What did the Commission do to determine whether comments filed under an individual's name was in fact from that person? Please provide any guidelines provided to staff tasked with making these determinations.
8. The Order states that the FCC "focused its review of the record on the submitted comments that bear substantively on the legal and public policy consequences of the actions."¹⁰ How did the Commission determine whether comments met this standard? Please provide any guidelines provided to staff tasked with making these determinations and any internal legal analysis to support these guidelines.
9. Several members of this Committee filed comments in the docket of this proceeding, yet a number of the arguments raised in those comments were either dismissed out of hand or overlooked entirely.¹¹ How did the Commission decide which arguments filed by members of Congress should not be considered?
10. The FCC's Order notes that the FCC devoted "substantial resources" to reviewing and evaluating "the content of the approximately 23 million express comments," or "shorter submissions that are made directly into a web form and do not require supporting file attachments."¹² Did the FCC determine that any of those 23 million "shorter submission" comments contained "substantive issues" that were relevant to the FCC's decision.¹³ If so, how did the FCC address those substantive issues in its Order?
11. The FCC's Order notes that the FCC has previously declined to apply internal rules regarding false statements. Does the FCC have the authority to require commenters to be

⁹ See note 1; FCC 2018 Order at ¶ 345.

¹⁰ *Id.* at ¶ 344.

¹¹ Comments of Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, et al. filed with Federal Communications Commission, *Restoring Internet Freedom*, WC Docket No. 17-108 (Aug. 4, 2017).

¹² See note 1, FCC 2018 Order, footnote 1182.

¹³ *Id.* at footnote 1182.

truthful in their submissions to the FCC? If so, why did the FCC choose not to require commenters to be truthful?

12. As noted by the National Hispanic Media Coalition (NHMC), the FCC has received tens of thousands of consumer complaints related to net neutrality, yet the Commission denied NHMC's request to include the filings in the record.¹⁴ In denying NHMC's request, the FCC relied on arguments made by industry representatives, and noted, "[s]ince we do not rely on these informal complaints as the basis for the decisions we make today, we do not have an obligation to incorporate them into the record."¹⁵ What analysis did the FCC conduct to determine that consumer complaints about net neutrality violations were not relevant to the FCC's net neutrality decision? Please provide internal communications and any legal analysis conducted to support the decision not to rely on consumer complaints as evidence of harm.
13. The Order states that the Commission did not rely on comments filed under "fake" names.¹⁶ How did the Commission determine which filings used fake names? Please provide any internal communications or analysis regarding how the agency identified or analyzed fraudulent comments.
14. The Commission decided not to remove these fraudulent comments from the public website despite requests from the people associated with the identities. Please provide any internal communications and analysis explaining how the Commission decided not to remove these comments. Did the Commission remove any filings at all from the public record? If so, how did it decide which ones to remove? Please provide any documentation to support your response.
15. Did FCC staff review every comment filed in the docket? How many staff hours did the Commission devote to reviewing the record? Was staff assigned to work on the docket full time? Was staff asked to work overtime to complete the review of the record by a certain deadline? How much of the FCC's budget was spent to compensate staff designated to review the docket? How much of the FCC's budget was spent to pay staff overtime to review the docket? Please provide any documentation and internal communications, including communications provided to staff, regarding how to spend time reviewing the docket.
16. Did senior management at the Commission provide any training sessions for staff tasked with reviewing the record? If so, please provide any training material supplied to the staff.

¹⁴ *Id.* at ¶ 339.

¹⁵ *Id.* at ¶ 341-342 (citing AT&T Opposition and NCTA and USTelecom Opposition).

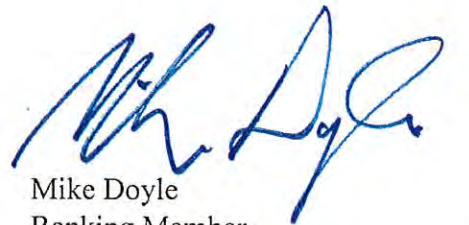
¹⁶ *Id.* at ¶ 345.

Your assistance in this matter is greatly appreciated, and we look forward to your response. If you have any questions, please contact Julie Babayan or Gerald Leverich with the Democratic Committee staff at (202) 225-3641.

Sincerely,



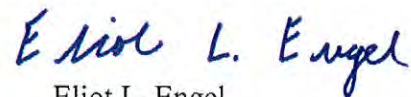
Frank Pallone, Jr.
Ranking Member



Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology



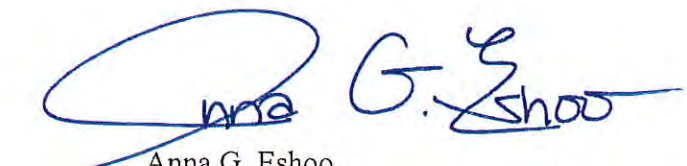
Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations




Eliot L. Engel
Member of Congress



Gene Green
Member of Congress



Anna G. Eshoo
Member of Congress



Bobby L. Rush
Member of Congress



Jan Schakowsky
Member of Congress



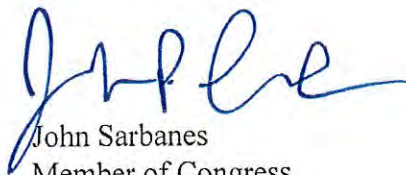
G.K. Butterfield
Member of Congress



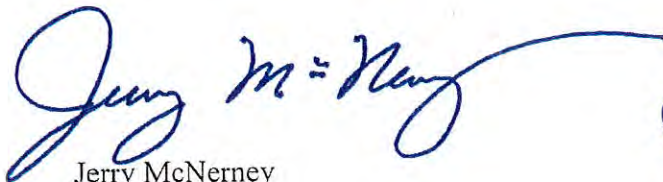
Doris Matsui
Member of Congress



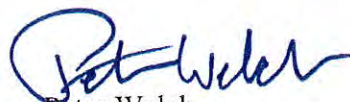
Kathy Castor
Vice Ranking Member



John Sarbanes
Member of Congress



Jerry McNerney
Member of Congress



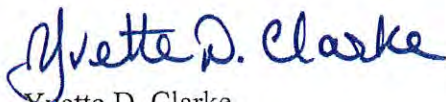
Peter Welch
Member of Congress



Ben Ray Lujan
Member of Congress



Paul D. Tonko
Member of Congress



Yvette D. Clarke
Member of Congress



Dave Loebsack
Member of Congress



Kurt Schrader
Member of Congress



Joseph P. Kennedy, III
Member of Congress



Tony Cardenas
Member of Congress



Raul Ruiz, M.D.
Member of Congress



Scott H. Peters
Member of Congress



Debbie Dingell
Member of Congress

Congress of the United States
Washington, DC 20515

March 21, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

We urge you to abandon your plan to drastically cut back the congressionally-mandated Lifeline program that has successfully provided phone and internet services when people cannot afford them. We ask that you reconsider your plan to take this critical program away from 8.3 million struggling Americans.

The Lifeline Program is essential for millions of Americans who use their devices to find jobs, to schedule doctor's appointments, to complete their school assignments, to interface with the government, or to stay in touch with their loved ones. The program helps Americans—including disproportionate numbers of veterans and people of color—help themselves.

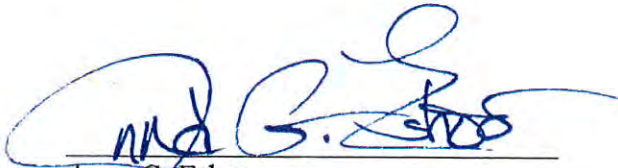
The FCC recently proposed to exclude the majority of carriers from participating in the program and to arbitrarily cap the fund. While you have stated that you are aiming to curb waste, fraud, and abuse, experts have repeatedly testified that the sorts of measures you are proposing do not have a successful track record. Instead, these approaches merely force millions of otherwise qualified people to lose service. These measures could be especially brutal during periods of economic downturn when people need the most help.

If you are truly concerned about waste, fraud, and abuse, the Commission should work to accelerate the rollout of the National Verifier that would ensure centralized oversight of the program. Unlike your approach, the National Verifier has received widespread and bipartisan support. In fact, the Government Accountability Office has testified that the National Verifier will resolve most issues that may remain with the program without the same brutal side effects on low-income communities. Remarkably, among the comments filed by key stakeholders on the docket, we are not aware of any that fully embrace the Chairman's proposal, and most urge substantial revision if not outright abandonment of the proceeding.


We therefore ask that you abandon this proceeding cutting the Lifeline program, and instead move forward with a full implementation of the 2016 reforms, including the expedition of the National Verifier. Policymakers at all levels of government are united in their desire to close the

digital divide, but the last thing we should be doing is rolling back the policies that have brought connectivity to millions of Americans. This proposal is untimely, counterproductive, and actively undermines our shared goal of connecting *everyone*.

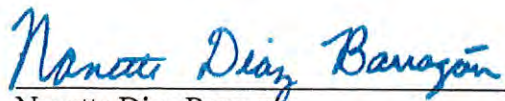
Sincerely,



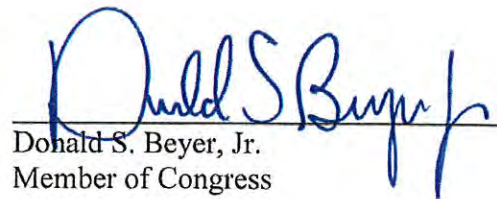
Anna G. Eshoo
Member of Congress




Yvette D. Clarke
Member of Congress




Nanette Diaz Barragan
Member of Congress



Donald S. Beyer, Jr.
Member of Congress



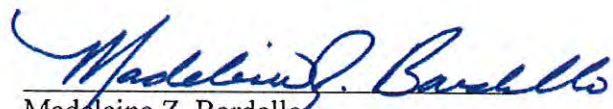
Sanford D. Bishop, Jr.
Member of Congress



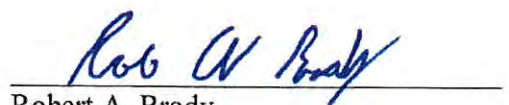
Earl Blumenauer
Member of Congress



Suzanne Bonamici
Member of Congress



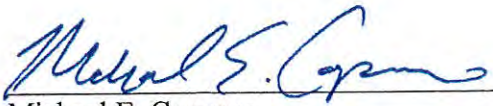
Madeleine Z. Bordallo
Member of Congress



Robert A. Brady
Member of Congress



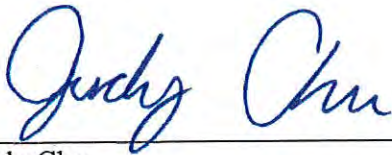
G. K. Butterfield
Member of Congress



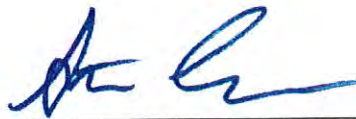
Michael E. Capuano
Member of Congress



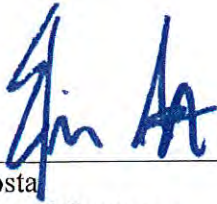
Tony Cardenas
Member of Congress



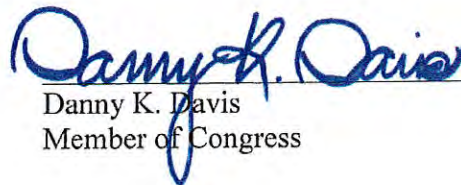
Judy Chu
Member of Congress



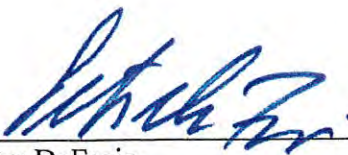
Steve Cohen
Member of Congress



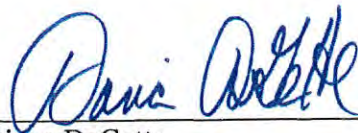
Jim Costa
Member of Congress



Danny K. Davis
Member of Congress



Peter DeFazio
Member of Congress




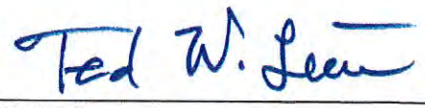
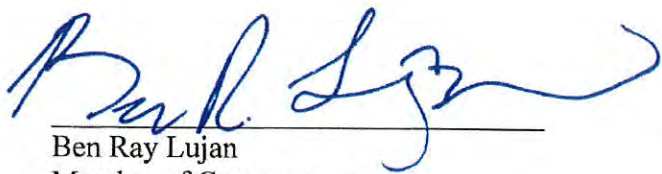
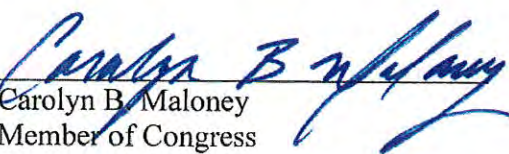
Diana DeGette
Member of Congress

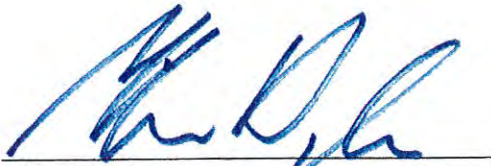


John Delaney
Member of Congress



Mark DeSaulnier
Member of Congress


Hakeem Jeffries
Member of Congress
Henry C. "Hank" Johnson, Jr.
Member of Congress
Robin L. Kelly
Member of Congress
Ro Khanna
Member of Congress
Barbara Lee
Member of Congress
Ted Lieu
Member of Congress
Zoe Lofgren
Member of Congress
Ben Ray Lujan
Member of Congress
Carolyn B. Maloney
Member of Congress
Doris Matsui
Member of Congress



Mike Doyle
Member of Congress



Keith Ellison
Member of Congress




Eliot L. Engel
Member of Congress



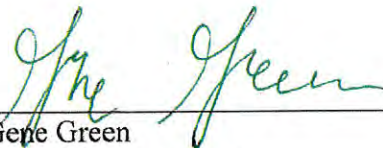
Adriano Espaillat
Member of Congress



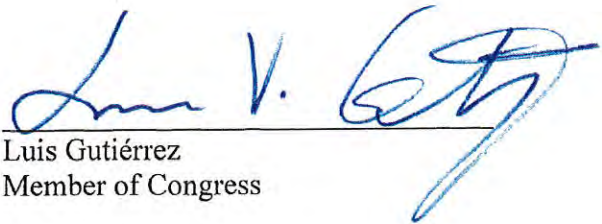
Tulsi Gabbard
Member of Congress



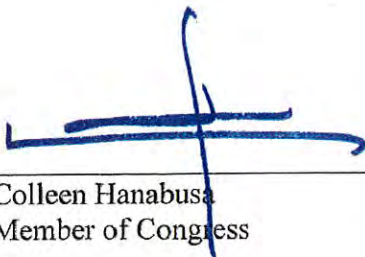
John Garamendi
Member of Congress



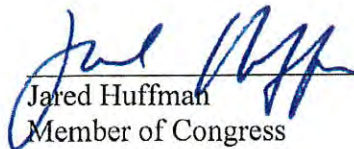
Gene Green
Member of Congress



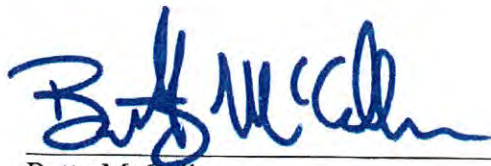
Luis Gutiérrez
Member of Congress



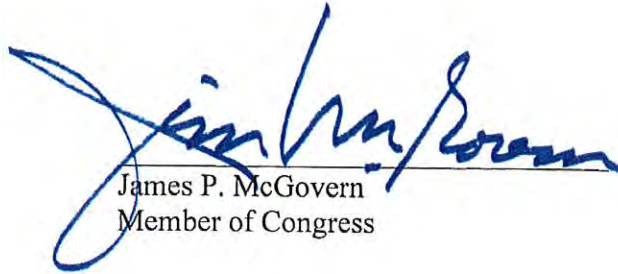
Colleen Hanabusa
Member of Congress



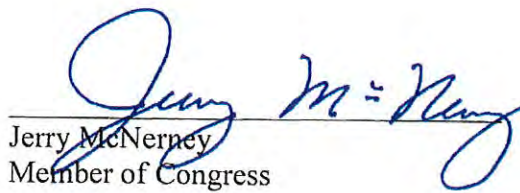
Jared Huffman
Member of Congress




Betty McCollum
Member of Congress



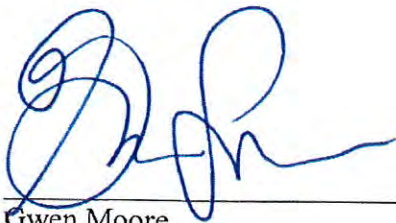
James P. McGovern
Member of Congress



Jerry McNerney
Member of Congress



Grace Meng
Member of Congress



Gwen Moore
Member of Congress




Grace F. Napolitano
Member of Congress



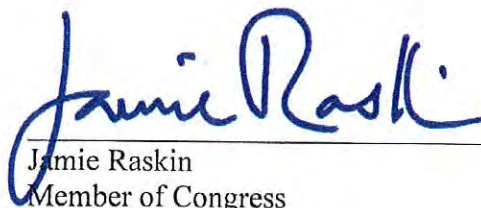
Richard M. Nolan
Member of Congress



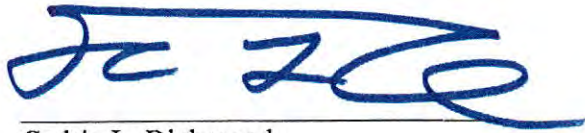
Eleanor Holmes Norton
Member of Congress



Mark Pocan
Member of Congress



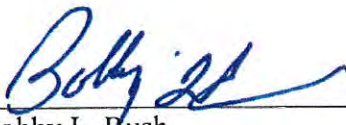
Jamie Raskin
Member of Congress



Cedric L. Richmond
Member of Congress



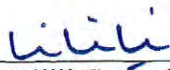
Lucille Roybal-Allard
Member of Congress



Bobby L. Rush
Member of Congress



Tim Ryan
Member of Congress



Gregorio Kilili Camacho Sablan
Member of Congress



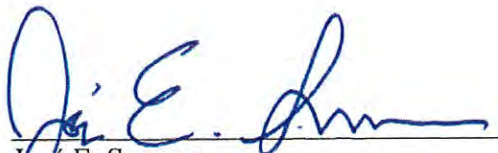
Jan Schakowsky
Member of Congress



David Scott
Member of Congress



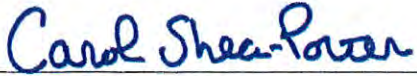
Robert C. "Bobby" Scott
Member of Congress



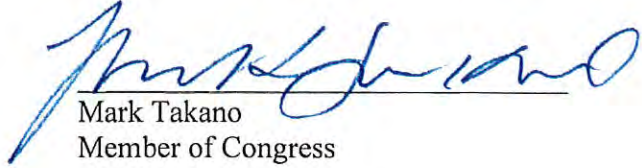
José E. Serrano
Member of Congress



Terri A. Sewell
Member of Congress



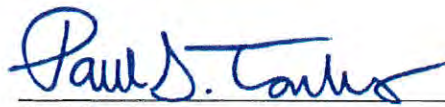
Carol Shea-Porter
Member of Congress



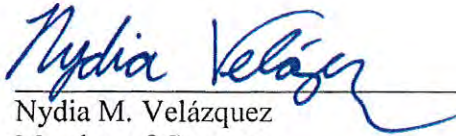
Mark Takano
Member of Congress



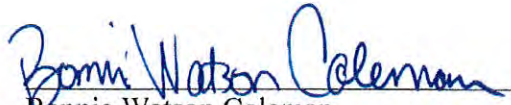
Dina Titus
Member of Congress



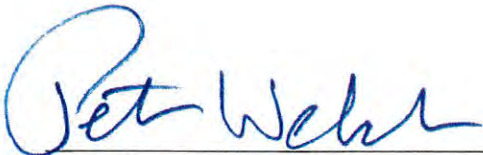
Paul Tonko
Member of Congress



Nydia M. Velázquez
Member of Congress



Bonnie Watson Coleman
Member of Congress



Peter Welch
Member of Congress



John Yarmuth
Member of Congress

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States 211
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641
March 26, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

The Honorable Michael O’Rielly
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

The Honorable Brendan Carr
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai, Commissioner O’Rielly, and Commissioner Carr:

We write to request that your offices provide information and legal analysis about your decision to speak at the Conservative Political Action Conference (CPAC) on February 23, 2018.¹ Your willingness to attend and help promote a political rally raises serious concerns about your roles as leaders of an independent federal agency, and the potential of taxpayer dollars being spent towards political ends.

As you know, Congress created the Federal Communications Commission (FCC) to operate as an independent federal agency,² insulated from the politics affecting the executive branch. As the Supreme Court explained in a 1935 decision, the public should be able to expect that independent agencies will carry out their responsibilities in a nonpartisan manner, acting with “entire impartiality” and “charged with the enforcement of no policy except the policy of

¹ *FCC Republican Faces Ethics Complaint After Calling for Trump’s Re-Election*, Ars Technica (Feb. 26, 2018) (available at www.arstechnica.com/tech-policy/2018/02/ajit-pai-accused-of-violating-ethics-rules-by-getting-nra-courage-award).

² 47 U.S.C. § 154; *see also* Congressional Research Service, *The Federal Communications Commission: Current Structure and Its Role in the Changing Telecommunications Landscape* (CRS Report No. RL32589) (Dec. 15, 2017).

The Honorable Ajit V. Pai
The Honorable Michael O'Rielly
The Honorable Brendan Carr
March 26, 2018
Page 2

the law.”³ This independence instills public confidence in the agency’s decisions, insulating it from “suspicion of partisan direction.”⁴ Yet under your collective leadership, the FCC has become not only more partisan, but increasingly political.

Despite the Congressional intent set out in the Commission’s authorizing statute, Commissioners seem to be using their positions during this administration as a platform to promote and even raise funds towards a political agenda.⁵ Indeed, some statements by Commissioners made during recent events have created deep partisan divide at the FCC.⁶

Most recently, this pattern of behavior was amplified when you—the three Republican FCC Commissioners—participated in the CPAC, a political conference and fundraiser for the American Conservative Union.⁷

Predictably, your attendance at CPAC led to a number of ethically questionable situations. For instance, just weeks after the terrible tragedy in Parkland, Florida, Chairman Pai was presented with the National Rifle Association’s “Charlton Heston Courage Under Fire Award” and a handmade firearm in recognition of the FCC’s efforts to repeal net neutrality.⁸ While we commend Chairman Pai’s ultimate decision to turn down the award from the NRA, we are nonetheless concerned about how an FCC Chair allowed himself to be put in a situation where such an ethically questionable award could be presented to him.⁹ Additionally,

³ *Humphrey's Executor v. United States*, 295 U.S. 602, at 624-25 (1935) (analyzing the FTC’s independence from the Executive branch).

⁴ *Id.*

⁵ Americans for Tax Reform, *FCC Chairman Ajit Pai on the Grover Norquist Show: Repealing Title II Regulations* (May 22, 2017) (<https://www.atr.org/fcc-chairman-ajit-pai-grover-norquist-show-repealing-title-ii-regulations>); FreedomWorks, *FreedomWorks and Small Business & Entrepreneurship Council Host Ajit Pai: 'The Future of Internet Regulation'* (April 24, 2017) (press release).

⁶ *FCC Chairman Weighs in on Net Neutrality Debate*, *Fortune* (April 26, 2017).

⁷ *Agenda, Conservative Political Action Committee 2018* (available at <https://docs.google.com/viewerng/viewer?url=http://cpac.conservative.org/wp-content/uploads/sites/2/2018/02/CPAC-2018-Agenda-Draft-2.22.18.pdf>)

⁸ *FCC Chair Pai Receives NRA Gun Award for Courage*, *The Hill* (Feb. 23, 2018).

⁹ *Shaub Presses FCC Chief Over Possible Ethics Violation with NRA Gift*, *The Hill* (Feb. 25, 2018).

The Honorable Ajit V. Pai
The Honorable Michael O'Rielly
The Honorable Brendan Carr
March 26, 2018
Page 3

Commissioner O'Rielly may have violated the Hatch Act by calling for President Trump's reelection,¹⁰ leading to a complaint being filed with the Office of Special Counsel.¹¹

In order to ensure that taxpayer dollars are not being spent for inappropriate political purposes, we request that you each, separately, provide answers to the following inquiries:

1. Did you seek advice from your General Counsel about whether you could attend CPAC under the FCC's or other relevant ethics rules? Please provide any written legal analysis you received approving your attendance for this event.
2. Did you or your staff conduct any research prior to attending CPAC about how the organization or the American Conservative Union would use the funds raised at this event? Did you ensure that no funds raised at the event would be spent for political purposes or to influence elections? Please provide any internal analysis that resulted from this research.
3. Your likeness was included in advertising for the event, specifically for the purpose for increasing attendance at the event and potentially raising funds for political purposes. According to the CPAC website, tickets for the fundraiser were offered for \$5,000 or more. Did you seek guidance from your General Counsel about whether your likeness or your official title could be used in advertising for this event? Please provide any written legal analysis you received approving the use of your likeness or your official title in advertising for this event.
4. Are you aware of any prior FCC Chairs or Commissioners who attended CPAC while they were serving in office? If so, was their attendance requested for the purpose of delivering a speech, did they make any political remarks, or did they accept any gifts? Was their attendance also used to advertise the event?
5. Are you aware of any other heads of independent agencies that have attended CPAC? If so, was their attendance requested for the purpose of delivering a speech, did they make any political remarks, or did they accept any gifts? Was their attendance also used to advertise the event?
6. Did you appear at CPAC during business hours? If so, did you earn a government salary during that time? Please provide timesheets indicating whether you took the time off to attend or prepare for the event. Please also provide copies of all communications

¹⁰ American Oversight, *FCC Commissioner Calls for Trump's Reelection, Violates Hatch Act* (February 23, 2018) (available at www.americanoversight.org/fcc-commissioner-calls-trumps-reelection-violates-hatch-act).

¹¹ *Id.*

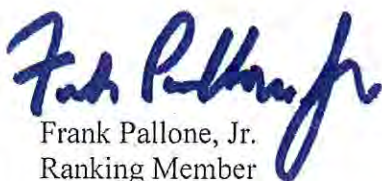
The Honorable Ajit V. Pai
The Honorable Michael O'Rielly
The Honorable Brendan Carr
March 26, 2018
Page 4

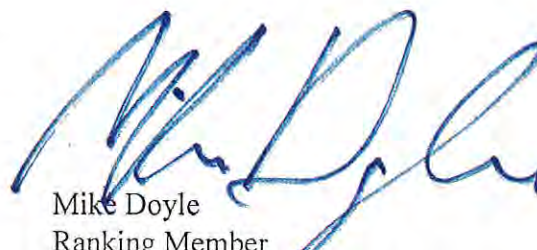
between you, or other Commission employees working on your behalf, and representatives of the American Conservative Union or CPAC, related to your appearance at CPAC.

7. Did any member of your staff help you write your speech or otherwise prepare for your appearance at the event? If so, how much of their time was spent in preparation? Did it occur during FCC business hours? Please provide time sheets for all staff members who assisted you in preparing for your appearance at CPAC, as consistent with the Privacy Act,¹² indicating whether they took time off to assist you in preparing for the event.
8. Did any member of your staff accompany you to CPAC? For any staff members who attended the event with you, please provide their FCC time sheets, as consistent with the Privacy Act,¹³ indicating whether they took time off to accompany you to the event.
9. Were government-owned or leased vehicles used for transportation to or from CPAC? If so, please provide all specific accounting for the use of these vehicles carrying FCC employees to and from the event.
10. Please provide a specific accounting of how all federal funds were used to support your appearance at CPAC, including pro-rated staff time and the use of any federal resources that were used for the purpose of facilitating your appearance.

We appreciate your attention to this important matter, and we hope that we can work together to restore the FCC's standing as an independent, non-political, and expert agency. Please provide individual responses to this letter by April 16, 2018. Should you have any questions regarding this request, please contact Gerald Leverich of the Democratic Committee staff at (202) 225-3641.

Sincerely,


Frank Pallone, Jr.
Ranking Member


Mike Doyle
Ranking Member
Subcommittee on Communications
and Technology

¹² 5 U.S.C. § 552a.

¹³ 5 U.S.C. § 552a.

Congress of the United States

Washington, DC 20515

March 20, 2018

The Honorable Brendan Carr
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Commissioner Carr,

We urge you to reconsider your proposed order that would short-circuit the safeguards for tribal lands set forth in the National Historic Preservation Act (NHPA).¹ While we are enthusiastic supporters of efforts to deploy more wireless broadband, including new 5G technologies, we do not believe the Federal Communications Commission (FCC) should set up this false choice between broadband deployment and respect for tribal sovereignty. Your proposal would undermine the foundations of tribal protection and consultation set forth by Congress in the NHPA,² while doing nothing to secure a single enforceable commitment that broadband providers will actually build more infrastructure.

Congress instituted the consultation requirements in NHPA specifically to protect the heritage of sovereign tribal communities, and these consultations have been successful. For example, the Delaware Tribe uses the NHPA to protect culturally significant areas where the tribe “endured over 300 years of forced removals across 16 states” and where at least 13,000 tribal members were buried, many in unmarked graves.³ But leaders of the Choctaw Nation are afraid that if the FCC moves forward with its plans to curtail these consultations, new infrastructure installations risk “irreparably damaging the human remains, sacred sites, and historic properties” of the tribe’s ancestors.⁴ If these lands are harmed, they can never be replaced.

The proposed order renders the NHPA toothless in its central purpose to protect tribally significant sites because it would carve out all small wireless facilities from the NHPA process. The proposed order claims these small wireless facilities are the size of a pizza box, but the wireless industry notes that hundreds of thousands of these sites will need to be deployed to meet consumer demand for new 5G networks.⁵ If the FCC were to carve out small wireless facilities from NHPA,⁶ the Commission could be subjecting culturally significant sites to death by hundreds of thousands of small-cell cuts.

¹ Federal Communications Commission, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, WT Docket No. 17-79, FCC-CIRC1803-01.

² CRS, *A Section 106 Review Under the National Historic Preservation Act: How It Works*, at 6 (May 16, 2012) (“Consultation is the backbone of the Section 106 process. It is an interactive process in which an agency evaluates an undertaking’s effects on a historic site with input from consulting parties. Consulting parties include . . . affected Indian tribes or Native Hawaiian organizations.”).

³ Delaware Tribe of Indians, Comments, WT Docket No. 17-79 (Mar. 9, 2018).

⁴ Choctaw Nation of Oklahoma, Comments, WT Docket No. 17-79 (Feb. 8, 2018).

⁵ Senate Committee on Commerce, Science, and Transportation, *Hearing on Rebuilding Infrastructure in America: Investing in Next Generation Broadband*, 115th Cong. (Mar. 13, 2018).

⁶ See note 1 at ¶ 35.

To the extent the NHPA remains intact, your proposed order shifts the burdens away from the corporations that benefit from the order and onto often cash-strapped tribes who receive nothing in return. The existing system ensures that these communities can afford to perform an adequate review to protect their sacred land by allowing them to collect a fee from the carriers that benefit from the deployment. Yet, rather than provide the additional resources to tribes to deal with the coming onslaught of new deployments, your proposed order would shorten the tribes' time for responding to consultation requests. Even worse, the proposed order would allow an applicant to cut out the tribes altogether, and then places the burden on the tribe who may have been excluded from the process to prove that the corporations did not make reasonable and good faith efforts to identify historic properties. The end result of this process will inevitably be the destruction of culturally significant tribal lands that never received a sufficient review.

Above all, we are dismayed that this most recent Order more broadly reflects the culture of this Commission's majority to act always at the behest of industry again and again at the expense of consumers, localities, and otherwise marginalized and disenfranchised communities who are in the most need of their government to look out for *them*. From neglecting to provide sufficient local representation on the BDAC, to the hurtful and unnecessary Lifeline proposal currently before the Commission, each month we have witnessed further abdication by the agency of its duty to act in the public interest.

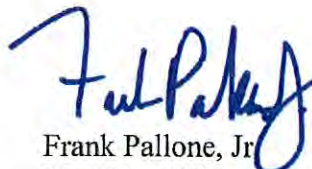
We all agree that it is a priority to have every American connected and ensure that the U.S. remains competitive in 5G and other technologies, but there surely is a way to do so without the unilateral sacrifice of so many other values. We implore you to reconsider your current proposal and instead work to ensure tribes are given more resources to protect their lands.

We look forward to your timely response.

Sincerely,



Anna G. Eshoo
Member of Congress



Frank Pallone, Jr.
Member of Congress



Raul Ruiz
Member of Congress

cc: Members, Federal Communications Commission

Congress of the United States
Washington, DC 20515

April 5, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

We ask that the Federal Communications Commission (FCC) take immediate action under federal law to address the prevalence of what could be hostile, foreign cell-site simulators—or stingrays—surveilling Americans in the nation’s Capital.

Cell-site simulators function essentially as fake cellphone towers, allowing their operators to trick nearby consumers’ cell phones into giving up confidential information that would normally be protected by consumers’ cell phone providers.¹ Press reports surfaced earlier this week that the Department of Homeland Security had identified suspected, unauthorized cell-site simulators operating throughout Washington.² More troubling, it appears that these cell-site simulators could be gathering intelligence on unwitting Americans on behalf of foreign governments.³

If these reports are true, it marks an incredible security vulnerability in the seat of the Federal government. Critical federal agencies including those involved in national defense and intelligence operate in the Washington D.C. area, and these cell-site simulators could be surreptitiously intercepting the sensitive data of federal government employees at these agencies. Just as troubling, these foreign actors could be intercepting communications from American citizens. The FCC, however, has the ability to take action to protect Americans from this type of foreign government surveillance.⁴

¹ See 47 U.S.C. § 222.

² *DHS Confirms It has Detected Evidence of Mobile Snooping Devices Around DC*, CNN (Apr. 3, 2018) (www.cnn.com/2018/04/03/politics/dhs-stingrays-washington-dc/index.html).

³ *Id.*

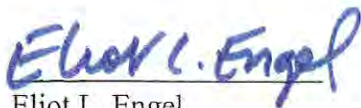
⁴ 47 U.S.C. § 301

As the agency in charge of managing the commercial airwaves, the FCC has the statutory power to stop the illicit use of cell-site simulators.⁵ Specifically, the Communications Act prohibits the very type of unauthorized transmissions that non-licensed cell-site simulators rely on to conduct surveillance.⁶ With no apparent evidence that these recently revealed unauthorized cell-site simulators are operating with an FCC license, it would seem the FCC need only to enforce the law to stop this foreign intelligence gathering.

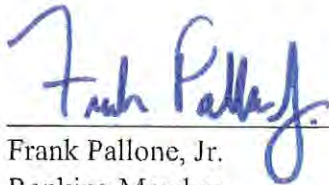
When prompted in the past to address the use of cell-site simulators by domestic governments, the FCC has only created a task force to “develop concrete solutions to protect the cellular network systemically from similar unlawful intrusions and interceptions.”⁷ Consumer advocates have even filed legal complaints with the FCC asking them to take immediate action to address the use of such cell-site simulators.⁸ Nevertheless, no action has been taken to date to actually address this problem. With foreign actors now potentially taking advantage of the Commission’s inaction, the FCC should act, consistent with applicable law and regulations, to investigate these allegations and address any unlawful use of cell-site simulators in the Capital and anywhere else they are used in U.S. soil.

We appreciate your assistance with this important matter and respectfully request a response to this letter forthwith.

Sincerely,



Eliot L. Engel
Ranking Member
Foreign Affairs Committee



Frank Pallone, Jr.
Ranking Member
Energy & Commerce Committee



Bennie G. Thompson
Ranking Member
Homeland Security Committee

⁵ *Id.*

⁶ *Id.* (“No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under an in accordance with this [Act] and with a license in that behalf granted under the provisions of this [Act].”).

⁷ Letter from Christopher Krebs, Senior Official Performing the Duties of the Undersecretary, National Protection and Programs Directorate, Department of Homeland Security to Senator Ron Wyden (Mar. 26, 2018).

⁸ Complaint for Relief Against Unauthorized Radio Operation and Willful Interference with Cellular Communications, Center for Media Justice, et. al. (Aug. 16, 2016).

The Honorable Ajit V. Pai

April 5, 2018

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cc: The Honorable Kristjen M. Nielsen, Secretary, Department of Homeland Security
The Honorable John J. Sullivan, Acting Secretary, Department of State
The Honorable Brendan Carr, Commissioner, Federal Communications Commission
The Honorable Mignon Clyburn, Commissioner, Federal Communications Commission
The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission
The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission

DEBBIE DINGELL
12TH DISTRICT, MICHIGAN

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April 6, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I write to ask the Federal Communications Commission (FCC) to open an investigation into whether Cambridge Analytica has or has ever had access to consumers viewing or other personal data, whether Cambridge Analytica used such data to influence the 2016 Presidential Election, and whether Cambridge Analytica's use of such data violated the Communications Act.^[1]

Reports have surfaced indicating that Cambridge Analytica—a data analysis firm with close ties to President's Trump's 2016 Election Campaign—has used consumers' personal information without consent.^[2] Reports have focused primarily on how Cambridge Analytica obtained intimate data from more than 87 million Facebook users.^[3] Yet, statements made by officers at Cambridge Analytica indicate that they may have also obtained the specific viewing habits of many subscribers in the United States.^[4]

Specifically, Cambridge Analytica program director Brittany Kaiser claimed as part of a 2016 interview that the company purchased consumers viewing or other personal data.^[5] Kaiser notes that these data are exceptionally detailed and can "tell you exactly when someone logs in,

^[1] See 47 U.S.C. § 551.

^[2] Time, *Facebook's Cambridge Analytica Controversy Could Be Big Trouble for the Social Network. Here's What to Know* (Mar. 21, 2018) (time.com/5205314/facebook-cambridge-analytica-breach/).

^[3] *Id.*

^[4] Commonwealth, *Voter Analytics with Brittany Kaiser CW 51-Transcript* (Mar. 29, 2016) (www.commonwealthy.com/voter-analytics-transcript/).

^[5] *Id.*

what they are recording, [and] what they fast forward through.”^[6] What’s more, reports indicate that Cambridge Analytica’s Chief Revenue Officer claimed earlier this year that the company could not only use such viewing habits to understand voters’ preferences, but that the company could also use that data in conjunction with new smart TVs and set-top-boxes to target political content on televisions.^[7]

Given these reports, the FCC has a responsibility to launch an investigation to uncover whether any entity that the FCC regulates sold or otherwise provided any subscriber data to Cambridge Analytica and, if so, whether such provision of data violated the Communications Act. Sections 338 and 631 of the Communications Act provide several protections for sensitive subscriber information of the type Cambridge Analytica claims to have obtained. The privacy protections in both Sections 338 and 631 include a requirement that operators provide an annual notice to their subscribers describing the “nature” of the information that will be collected by the operator and the nature of the use of such information.^[8] Such disclosure must also detail the types of persons with whom the data may be shared.^[9] Importantly, both sections also require that an operator obtain the prior written or electronic consent of a subscriber before collecting personally identifiable information.^[10] Finally, the law requires that operators “take such actions as are necessary” to prevent unauthorized access to subscribers’ viewing habits.^[11]

Given the specific protections laid out under the Communications Act and the troubling scope of the recent revelations regarding Cambridge Analytica, I believe the Commission should bring its investigatory resources to bear to protect consumers’ privacy. Specifically, I request the Commission investigate whether any entity under the FCC’s oversight provided its subscribers’ personally identifiable information or viewing habits to Cambridge Analytica, and whether such disclosure violated the Communications Act. Further, such an investigation should seek to uncover the business relationship between these companies and Cambridge Analytica, including any understanding by the companies of how Cambridge Analytica used such data and whether Cambridge Analytica planned to use the data to influence the 2016 Presidential Election.

^[6] *Id.*

^[7] Fast Company, *Trump’s Data Gurus Are Now Turning Their Attention To Your TV* (Nov. 15, 2017) (www.fastcompany.com/40477438/cambridge-analytica-has-your-tv-in-mind-and-an-unlikely-ally).

^[8] 47 U.S.C. § 551(a)(1)(A); 47 U.S.C. § 338(i)(1)(A)

^[9] 47 U.S.C. § 551(a)(1)(B); 47 U.S.C. § 338(i)(1)(B)

^[10] 47 U.S.C. § 551(b)(1); 47 U.S.C. § 338(i)(4)(A)

^[11] 47 U.S.C. § 551(c)(2)(C)(ii)(I); 47 U.S.C. § (i)(4)(B)(iii)(II)(aa)

I appreciate your assistance with this important matter. Please provide a response to this letter within three weeks of receipt. Should you have any questions regarding this request, please contact Kevin Dollhopf in the Office of Congresswoman Debbie Dingell at (202) 225-4071

Sincerely,

A handwritten signature in blue ink that reads "Debbie Dingell". The signature is written in a cursive, flowing style.

Debbie Dingell
Member of Congress